

Regulatory Management Division

Office of Policy

US Environmental Protection Agency

1200 Pennsylvania Ave NW (1803A)

Washington, DC 20460

(202) 564-2855

muellerleile.caryn@epa.gov

From: Evalenko, Sandy

Sent: Monday, April 10, 2017 10:26 AM

To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>

Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Subject: Re: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Sandy

Sent from my iPhone

On Apr 10, 2017, at 10:01 AM, Muellerleile, Caryn <Muellerleile.Caryn@epa.gov> wrote:

Hello,

Deliberative Process / Ex. 5

Let me know if you have any questions.

Caryn

From: Evalenko, Sandy
Sent: Friday, April 07, 2017 9:25 AM
To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Sandhy

From: Muellerleile, Caryn
Sent: Friday, April 07, 2017 9:22 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Hello,

Deliberative Process / Ex. 5

Caryn

From: Evalenko, Sandy

Sent: Friday, April 07, 2017 8:16 AM

To: Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>

Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>

Subject: Regulatory Agenda FY 2018 Spreadsheet

Importance: High

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

Sandy

From: Owens, Nicole

Sent: Tuesday, April 04, 2017 12:06 PM

To: Lewis, Josh <Lewis.Josh@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>; Farrar, Wanda <farrar.wanda@epa.gov>; Eagles, Tom <Eagles.Tom@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Hofmann, Angela <Hofmann.Angela@epa.gov>; Smith, Peterj <Smith.Peterj@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Noggle, William <Noggle.William@epa.gov>

Cc: Curry, Bridgid <Curry.Bridgid@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Griffiths, Charles <Griffiths.Charles@epa.gov>; Morgan, Cynthia <Morgan.Cynthia@epa.gov>

Subject: For Review by COB Wednesday: Regulatory Agenda FY 2018 Spreadsheet

Hello –

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks for the help,

Nicole

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Mon 4/10/2017 3:08:50 PM
Subject: FW: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Muellerleile, Caryn
Sent: Monday, April 10, 2017 10:52 AM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Caryn Muellerleile

Regulatory Management Division

Office of Policy

US Environmental Protection Agency

1200 Pennsylvania Ave NW (1803A)

Washington, DC 20460

(202) 564-2855

muellerleile.caryn@epa.gov

From: Evalenko, Sandy

Sent: Monday, April 10, 2017 10:26 AM

To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>

Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Subject: Re: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sandy

Sent from my iPhone

On Apr 10, 2017, at 10:01 AM, Muellerleile, Caryn <Muellerleile.Caryn@epa.gov> wrote:

Hello,

Deliberative Process / Ex. 5

Let me know if you have any questions.

Caryn

From: Evalenko, Sandy

Sent: Friday, April 07, 2017 9:25 AM

To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>

Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>

Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Sandhy

From: Muellerleile, Caryn
Sent: Friday, April 07, 2017 9:22 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Hello,

Deliberative Process / Ex. 5

Caryn

From: Evalenko, Sandy
Sent: Friday, April 07, 2017 8:16 AM
To: Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: Regulatory Agenda FY 2018 Spreadsheet
Importance: High

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

Sandy

From: Owens, Nicole

Sent: Tuesday, April 04, 2017 12:06 PM

To: Lewis, Josh <Lewis.Josh@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>; Farrar, Wanda <farrar.wanda@epa.gov>; Eagles, Tom <Eagles.Tom@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Hofmann, Angela <Hofmann.Angela@epa.gov>; Smith, Peterj <Smith.Peterj@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Noggle, William <Noggle.William@epa.gov>

Cc: Curry, Bridgid <Curry.Bridgid@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Griffiths, Charles <Griffiths.Charles@epa.gov>; Morgan, Cynthia <Morgan.Cynthia@epa.gov>

Subject: For Review by COB Wednesday: Regulatory Agenda FY 2018 Spreadsheet

Hello –

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks for the help,

Nicole

To: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Ruf, Christine[Ruf.Christine@epa.gov]; Evalenko, Sandy[Evalenko.Sandy@epa.gov]
From: Muellerleile, Caryn
Sent: Mon 4/10/2017 2:52:29 PM
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

A)
e.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Caryn Muellerleile

Regulatory Management Division

Office of Policy

US Environmental Protection Agency

1200 Pennsylvania Ave NW (1803A)

Washington, DC 20460

(202) 564-2855

muellerleile.caryn@epa.gov

From: Evalenko, Sandy

Sent: Monday, April 10, 2017 10:26 AM

To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>

Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>

Subject: Re: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Sandy

Sent from my iPhone

On Apr 10, 2017, at 10:01 AM, Muellerleile, Caryn <Muellerleile.Caryn@epa.gov> wrote:

Hello,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Caryn

From: Evalenko, Sandy
Sent: Friday, April 07, 2017 9:25 AM
To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Deliberative Process / Ex. 5

Sandhy

From: Muellerleile, Caryn
Sent: Friday, April 07, 2017 9:22 AM
To: Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>
Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>
Subject: RE: Regulatory Agenda FY 2018 Spreadsheet

Hello,

Deliberative Process / Ex. 5

Caryn

From: Evalenko, Sandy

Sent: Friday, April 07, 2017 8:16 AM

To: Owens, Nicole <Owens.Nicole@epa.gov>; Curry, Bridgid <Curry.Bridgid@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>

Cc: Nelson, Tomeka <Nelson.Tomeka@epa.gov>

Subject: Regulatory Agenda FY 2018 Spreadsheet

Importance: High

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

Sandy

From: Owens, Nicole

Sent: Tuesday, April 04, 2017 12:06 PM

To: Lewis, Josh <Lewis.Josh@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>; Farrar, Wanda <farrar.wanda@epa.gov>; Eagles, Tom <Eagles.Tom@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Hofmann, Angela <Hofmann.Angela@epa.gov>; Smith, Peterj <Smith.Peterj@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Noggle, William <Noggle.William@epa.gov>

Cc: Curry, Bridgid <Curry.Bridgid@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Griffiths, Charles <Griffiths.Charles@epa.gov>; Morgan, Cynthia <Morgan.Cynthia@epa.gov>

Subject: For Review by COB Wednesday: Regulatory Agenda FY 2018 Spreadsheet

Hello –

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks for the help,

Nicole

To: Downing, Donna[Downing.Donna@epa.gov]
From: Melgin, Wendy
Sent: Fri 4/7/2017 4:25:09 PM
Subject: RE: western group

Hi Donna; I think I need to read this again to see

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

We need to figure out what that means, for example

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Personal Matters / Ex. 6

Personal Matters / Ex. 6

Personal Matters / Ex. 6

If we end up

having the national meeting, I'll see you in SF; maybe a good time to get the western group together!

From: Downing, Donna
Sent: Friday, April 07, 2017 11:13 AM
To: Melgin, Wendy <melgin.wendy@epa.gov>
Subject: RE: western group

Hiya Wendy –

I just have the Scalia opinion published as part of the Supreme Court's response in *Rapanos*.
I'm attaching that...

Personal Matters / Ex. 6

Donna

From: Melgin, Wendy
Sent: Friday, April 07, 2017 12:08 PM
To: McCarthy, Julia <McCarthy.Julia@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>
Subject: RE: western group

Donna, do you have a copy of just Scalia's brief?

From: McCarthy, Julia
Sent: Friday, April 07, 2017 9:05 AM
To: Melgin, Wendy <melgin.wendy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: western group

Hey Donna,

Just to reiterate what I said yesterday on the call, I think it's very important that we set up a group to consider **Deliberative Process / Ex. 5**. This should definitely include Regions 7,8,9,10 and Wendy, of course. It also may be useful to bring in the likes of Bob Lichvar from ERDC and Bill Kepner from ORD to provide us with some technical input on how **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Additionally, I assume **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

Cheers,
Julia

From: Melgin, Wendy
Sent: Thursday, April 6, 2017 12:10 PM
To: McCarthy, Julia <McCarthy.Julia@epa.gov>; Downing, Donna
<Downing.Donna@epa.gov>
Subject: western group

Please include me in this group when formed even though I'm in R5! Most of my hydro experience and background is from the west. Many things to consider when determining **Deliberative Process / Ex. 5** Hyporheic processes for example. This is a record runoff year in Nevada and other places so I hope photos are being taken to document.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Thur 4/6/2017 7:59:36 PM
Subject: FW: Urgent: Federalism revised draft letter
UPDATED FEDCON.docx

fyi

From: Goodin, John
Sent: Thursday, April 06, 2017 3:31 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: FW: Urgent: Federalism revised draft letter

Hit send too quickly...

Deliberative Process / Ex. 5

From: Goodin, John
Sent: Thursday, April 06, 2017 3:21 PM
To: Bowles, Jack <Bowles.Jack@epa.gov>
Cc: Hanson, Andrew <Hanson.Andrew@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Donna Downing <Downing.Donna@epa.gov>; Steven Neugeboren <Neugeboren.Steven@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Urgent: Federalism revised draft letter

Jack—in Andrew's absence today would you give this a quick look?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

John

From: Ferguson, Lincoln
Sent: Thursday, April 06, 2017 3:11 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: ATTENTION: FW: WOTUS messaging

Attached is the updated version of the letter. Please let me know of any further edits/changes.

Thanks,
Lincoln

From: Greenwalt, Sarah
Sent: Thursday, April 6, 2017 3:06 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: ATTENTION: FW: WOTUS messaging

Deliberative Process / Ex. 5

John, Lincoln has said he can help facilitate signing today or tomorrow if needed but neither one of us know the process, so direction is appreciated.

Great work, team!

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Neugeboren, Steven

Sent: Thursday, April 6, 2017 2:32 PM

To: Goodin, John <Goodin.John@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>;
Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Kupchan, Simma
<Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wendelowski,
Karyn <wendelowski.karyn@epa.gov>

Subject: RE: ATTENTION: FW: WOTUS messaging

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Goodin, John

Sent: Thursday, April 06, 2017 1:57 PM

To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Shapiro, Mike
<Shapiro.Mike@epa.gov>

Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: ATTENTION: FW: WOTUS messaging

Deliberative Process / Ex. 5

OK if you reply to all, Steve.

Thanks

John

From: Greenwalt, Sarah

Sent: Thursday, April 06, 2017 1:32 PM

To: Goodin, John <Goodin.John@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>

Cc: Freire, JP <Freire.JP@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Shapiro,

Mike <Shapiro.Mike@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>

Subject: RE: WOTUS messaging

JP did you have any input?

Deliberative Process / Ex. 5

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Goodin, John

Sent: Thursday, April 6, 2017 12:17 PM

To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Cc: Freire, JP <Freire.JP@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>

Subject: RE: WOTUS messaging

Thanks, Lincoln—attached is a clean copy.

Sarah—

Deliberative Process / Ex. 5

Thanks,

John

From: Ferguson, Lincoln

Sent: Thursday, April 06, 2017 8:30 AM

To: Goodin, John <Goodin.John@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Cc: Freire, JP <Freire.JP@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>

Subject: RE: WOTUS messaging

Looks good to me. **Deliberative Process / Ex. 5** The Administrator is currently scheduled to be out of the office the week you are looking at.

Let me know if there is anything else I can do.

Thanks,
LF

From: Goodin, John
Sent: Wednesday, April 5, 2017 5:56 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Freire, JP <Freire.JP@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: WOTUS messaging

Deliberative Process / Ex. 5

Thanks

John

4/19 10am-12n

4/19 2pm-4pm

4/20 9am-11 am

From: Greenwalt, Sarah
Sent: Wednesday, April 05, 2017 2:38 PM
To: Goodin, John <Goodin.John@epa.gov>
Cc: Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Freire, JP <Freire.JP@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>
Subject: Re: WOTUS messaging

That's great, thanks!

Sent from my iPhone

On Apr 5, 2017, at 1:00 PM, Goodin, John <Goodin.John@epa.gov> wrote:

Deliberative Process / Ex. 5

Thanks

John

From: Greenwalt, Sarah
Sent: Wednesday, April 05, 2017 12:23 PM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>
Cc: Freire, JP <Freire.JP@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Subject: RE: WOTUS messaging

John will circulate once that has been added in.

Sarah A. Greenwalt

Senior Advisor to the Administrator

for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

From: Ferguson, Lincoln

Sent: Wednesday, April 5, 2017 11:41 AM

To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Cc: Freire, JP <Freire.JP@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>

Subject: Re: WOTUS messaging

Happy to help.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

On Apr 5, 2017, at 11:33 AM, Greenwalt, Sarah <greenwalt.sarah@epa.gov> wrote:

JP and Lincoln,

Deliberative Process / Ex. 5

Thanks!

Sarah A. Greenwalt

Senior Advisor to the Administrator
for Water and Cross-Cutting Issues

U.S. Environmental Protection Agency

Work: 202-564-1722|Cell: 202-816-1388

Greenwalt.Sarah@epa.gov

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Wed 4/5/2017 7:27:45 PM
Subject: federalism letter

Deliberative Process / Ex. 5

I
re
er

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Hanson, Andrew[Hanson.Andrew@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Wed 4/5/2017 4:45:34 PM
Subject: Corps_FedConInviteWOTUS2.docx
Corps_FedConInviteWOTUS2.docx

Deliberative Process / Ex. 5

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Barger, Cindy S CIV USARMY HQDA ASA CW (US)
Sent: Fri 3/31/2017 6:53:24 PM
Subject: RE: Notice of Intention re: Clean Water Rule (UNCLASSIFIED//FOUO)

Thanks Donna and Rose. Totally understand. Just wanting to make his inbox a little lighter for the future :)

PRE-DECISIONAL/FOR OFFICIAL USE ONLY/NOT FOR DISTRIBUTION.

Cindy S. Barger
Environmental Planner
Office of the Assistant Secretary of the Army (Civil Works)
Project Planning and Review
441 G Street, NW Rm 6R88
Washington, DC 20314
tel: (202) 761-0041
cel: Ex. 6 Personal Privacy (PP)

-----Original Message-----

From: Downing, Donna [mailto:Downing.Donna@epa.gov]
Sent: Friday, March 31, 2017 2:52 PM
To: Barger, Cindy S CIV USARMY HQDA ASA CW (US) <cindy.s.barger.civ@mail.mil>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: [Non-DoD Source] RE: Notice of Intention re: Clean Water Rule (UNCLASSIFIED//FOUO)

That would be Rose. I'll cc her on this (the reason Mr. Owen was listed was because he was the POC in the Federal Register notice).

Thanks, Rose!

Donna

-----Original Message-----

From: Barger, Cindy S CIV USARMY HQDA ASA CW (US) [mailto:cindy.s.barger.civ@mail.mil]
Sent: Friday, March 31, 2017 2:50 PM
To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: FW: Notice of Intention re: Clean Water Rule (UNCLASSIFIED//FOUO)

Hi Donna, Carrie et al - I'm checking internally on this and will let you know our thoughts. Could you let whomever is managing the CWAwaters email to change the Army POC from Mr. Owen to me?

Thanks!
Cindy

Cindy S. Barger
Environmental Planner
Office of the Assistant Secretary of the Army (Civil Works) Project Planning and Review
441 G Street, NW Rm 6R88
Washington, DC 20314

tel: (202) 761-0041

cel: Ex. 6 Personal Privacy (PP)

-----Original Message-----

From: CWAwaters [mailto:CWAwaters@epa.gov]

Sent: Friday, March 31, 2017 2:28 PM

To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>

Cc: Owen, Gib A CIV USARMY HQDA ASA CW (US) <gib.a.owen.civ@mail.mil>; Kwok, Rose <Kwok.Rose@epa.gov>

Subject: [Non-DoD Source] FW: Notice of Intention re: Clean Water Rule

All active links contained in this email were disabled. Please verify the identity of the sender, and confirm the authenticity of all links contained within the message prior to copying and pasting the address to a Web browser.

FYI – we got this on Monday Deliberative Process / ACP Ex. 5 Let me know what you thin.

From: Stanley Goeing [Caution-mailto:sgoeing@kylawpractice.com]

Sent: Monday, March 27, 2017 1:50 PM

To: CWAwaters <CWAwaters@epa.gov>; gib.a.owen.civ@mail.mil

Subject: Notice of Intention re: Clean Water Rule

Ms. Downing and Mr. Owen,

I hope this email finds each of you doing well. I am an attorney in Lexington, Ky representing an individual who received a Cease and Desist Order dated March 7, 2017 from the Army Corp of Engineers which I am attaching to this email. From my research it appears that the order he received directly conflicts with President Trump's Executive Order as well as the Notice of Intent issued by your respective agencies on March 6, 2017.

The Cease and Desist Order alleges that my client has impacted both intermittent and ephemeral streams on his property during construction of a pond. As I understand it, going forward the EPA and the Army Corp of Engineers will be reevaluating their respective jurisdiction of these type streams in accordance with Justice Scalia's opinion in the Rapanos Case. This would seem to eliminate jurisdiction with regard to my client's case.

I am looking for guidance in responding to this order as the financial implications for my client going forward appear to be enormous. If you could direct me to the correct person to discuss this with I would

be greatly appreciative.

Sincerely,

Stanley Goeing

M. Stanley Goeing

Goeing Goeing and McQuinn PLLC

Attorneys at Law

300 East Main St. Suite 150

Lexington, Kentucky 40507

859-253-0088

or

10 Court Street

Winchester, Kentucky 40391

859-744-4004

Caution-www.kylawpractice.com < Caution-http://www.kylawpractice.com >

Goeing Goeing and McQuinn PLLC intends the information contained in this transmission for the use of the individual or entity to which it is addressed. This message may contain information that is privileged, confidential, attorneys' work product and/or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient (or the employee or agent responsible for delivering it to the intended recipient), you are hereby notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this communication in error, please notify us immediately at 859-744-4004 and delete the original message from your e-mail system. Thank you.

CLASSIFICATION: UNCLASSIFIED//FOR OFFICIAL USE ONLY

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Thur 3/30/2017 5:34:00 PM
Subject: Clean Water Rule final FRN - Word version
[EPA-HQ-OW-2011-0880-20862.docx](#)

Not Word Perfect!

To: Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Jensen, Stacey M CIV USARMY HQDA (US)
Sent: Wed 3/29/2017 7:32:34 PM
Subject: RE: [EXTERNAL] [Non-DoD Source] Re: WOTUS2 & hydrography

Deliberative Process / Ex. 5

-----Original Message-----

From: Kwok, Rose [mailto:Kwok.Rose@epa.gov]
Sent: Wednesday, March 29, 2017 3:31 PM
To: Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: [EXTERNAL] [Non-DoD Source] Re: WOTUS2 & hydrography

Deliberative Process / Ex. 5

-----Original Message-----

From: Jensen, Stacey M CIV USARMY HQDA (US) [mailto:Stacey.M.Jensen@usace.army.mil]
Sent: Wednesday, March 29, 2017 3:25 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: [EXTERNAL] [Non-DoD Source] Re: WOTUS2 & hydrography

Deliberative Process / Ex. 5

-----Original Message-----

From: Christensen, Damaris [mailto:Christensen.Damaris@epa.gov]
Sent: Sunday, March 26, 2017 6:08 PM
To: Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>
Cc: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: [EXTERNAL] [Non-DoD Source] Re: WOTUS2 & hydrography

Stacey, **Deliberative Process / Ex. 5**

My learn **Deliberative Process / Ex. 5**

Damaris

Sent from my iPhone

On Mar 26, 2017, at 1:53 PM, Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil <mailto:Stacey.M.Jensen@usace.army.mil> > wrote:

I think **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Stacey M. Jensen
HQUSACE Regulatory Program Manager
Sent from my iPhone

From: Christensen, Damaris <Christensen.Damaris@epa.gov
<mailto:Christensen.Damaris@epa.gov> >
Date: March 25, 2017 at 8:33:55 PM EDT
To: Auerbach, Daniel <Auerbach.Daniel@epa.gov <mailto:Auerbach.Daniel@epa.gov> >
Cc: Downing, Donna <Downing.Donna@epa.gov <mailto:Downing.Donna@epa.gov> >, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov <mailto:Eisenberg.Mindy@epa.gov> >, Kwok, Rose <Kwok.Rose@epa.gov <mailto:Kwok.Rose@epa.gov> >, Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil <mailto:Stacey.M.Jensen@usace.army.mil> >
Subject: [EXTERNAL] [Non-DoD Source] Re: WOTUS2 & hydrography

I'm wondering if

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thoughts?

Sent from my iPhone

> On Mar 24, 2017, at 5:05 PM, Auerbach, Daniel <Auerbach.Daniel@epa.gov
<mailto:Auerbach.Daniel@epa.gov> > wrote:
>

Deliberative Process / Ex. 5

>
> I'll look forward to further conversation next week.
>
>
>
> -----Original Message-----
> From: Auerbach, Daniel
> Sent: Thursday, March 23, 2017 11:06 AM
> To: Christensen, Damaris <Christensen.Damaris@epa.gov
<mailto:Christensen.Damaris@epa.gov> >; Jensen, Stacey M CIV USARMY HQDA (US)
<Stacey.M.Jensen@usace.army.mil <mailto:Stacey.M.Jensen@usace.army.mil> >
> Cc: Kwok, Rose <Kwok.Rose@epa.gov <mailto:Kwok.Rose@epa.gov> >
> Subject: RE: WOTUS2 & hydrography
>
> Ok! Let me know where/when.
>
> -----Original Message-----
> From: Christensen, Damaris
> Sent: Thursday, March 23, 2017 11:02 AM
> To: Auerbach, Daniel <Auerbach.Daniel@epa.gov <mailto:Auerbach.Daniel@epa.gov> >; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil

<mailto:Stacey.M.Jensen@usace.army.mil> >
> Cc: Kwok, Rose <Kwok.Rose@epa.gov <mailto:Kwok.Rose@epa.gov> >
> Subject: RE: WOTUS2 & hydrography
>
> Mindy wants this done ASAP. Maybe today at 2 or 2:30? Here or at the Corps, and hopefully we can call Rose? I'll text her.
>
> Trying to finish one thing up and then I'm heading out to my next meeting.
>
> Damaris
>
> -----Original Message-----
> From: Auerbach, Daniel
> Sent: Thursday, March 23, 2017 10:56 AM
> To: Christensen, Damaris <Christensen.Damaris@epa.gov
<mailto:Christensen.Damaris@epa.gov> >; Jensen, Stacey M CIV USARMY HQDA (US)
<Stacey.M.Jensen@usace.army.mil <mailto:Stacey.M.Jensen@usace.army.mil> >
> Cc: Kwok, Rose <Kwok.Rose@epa.gov <mailto:Kwok.Rose@epa.gov> >
> Subject: RE: WOTUS2 & hydrography
>
> Rose is cc'd. I'm pretty open today, but I'd want Rose involved ASAP. Monday afternoon and Tuesday morning are fine.
>

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

>
>
>
> -----Original Message-----
> From: Christensen, Damaris
> Sent: Thursday, March 23, 2017 10:28 AM
> To: Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil
<mailto:Stacey.M.Jensen@usace.army.mil> >; Auerbach, Daniel <Auerbach.Daniel@epa.gov
<mailto:Auerbach.Daniel@epa.gov> >
> Subject: RE: WOTUS2 & hydrography
>
> Yes. It would be great if Rose could participate

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

>
> Should we do this in person or over the phone?
>

> [tl;dr long scheduling discussion]

> In person:

> I am free today after 4, but I suspect that is COB for you, Stacey. I typically

Personal Matters / Ex. 6

Personal Matters / Ex. 6 come into the office for a meeting re: schedule with Mindy and Cindy at 9am. It's a stretch for me, but I could be here by 8, or we could meet at 9:45. I have an
so need to leave by about 10:40. Monday afternoon also looks pretty clear.

Personal Matters / Ex. 6

>
> By phone:

> Friday between 12:30 and 2:30 is open, and after 3:30.

>

> If none of those work and you are both free, I can move the training I am scheduled to take

today from 2:30-4 and we could meet then.

>

> Damaris

>

> -----Original Message-----

> From: Jensen, Stacey M CIV USARMY HQDA (US) [mailto:Stacey.M.Jensen@usace.army.mil]

> Sent: Thursday, March 23, 2017 9:25 AM

> To: Christensen, Damaris <Christensen.Damaris@epa.gov

<mailto:Christensen.Damaris@epa.gov> >; Auerbach, Daniel <Auerbach.Daniel@epa.gov

<mailto:Auerbach.Daniel@epa.gov> >

> Subject: RE: WOTUS2 & hydrography

>

> Spoke with Mindy - should we set up a time to discuss the approach and a way of getting it boiled down into simple terms for leadership?

>

> -----Original Message-----

> From: Auerbach, Daniel [mailto:Auerbach.Daniel@epa.gov]

> Sent: Wednesday, March 22, 2017 7:08 PM

> To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov <mailto:Eisenberg.Mindy@epa.gov> >;

Christensen, Damaris <Christensen.Damaris@epa.gov <mailto:Christensen.Damaris@epa.gov> >;

Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil

<mailto:Stacey.M.Jensen@usace.army.mil> >; Kupchan, Simma <Kupchan.Simma@epa.gov

<mailto:Kupchan.Simma@epa.gov> >; Kwok, Rose <Kwok.Rose@epa.gov

<mailto:Kwok.Rose@epa.gov> >; Downing, Donna <Downing.Donna@epa.gov

<mailto:Downing.Donna@epa.gov> >; Doley, Todd <Doley.Todd@epa.gov

<mailto:Doley.Todd@epa.gov> >; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov <mailto:Flannery-

Keith.Erin@epa.gov> >

> Cc: Goodin, John <Goodin.John@epa.gov <mailto:Goodin.John@epa.gov> >; Miller, Clay

<Miller.Clay@epa.gov <mailto:Miller.Clay@epa.gov> >

> Subject: [EXTERNAL] WOTUS2 & hydrography

>

Deliberative Process / Ex. 5

>

>

>

Deliberative Process / Ex. 5

>

>

>

Deliberative Process / Ex. 5

>

>

>

> This is certainly not the first consideration of available hydrography information. Rose and others have conducted various prior efforts, and I assume that next steps will need to wait for her input.

Deliberative Process / Ex. 5

>

>
>
> Finally, outside of OW, it is worth noting that a recent high-profile paper by Cohen et al. 2016 examined distances between NWI polygons and NHD lines for 8 large focal regions in CONUS. I'm happy to distill/brief that work if desired.

>
>
>
>
>
>
>
> Dan Auerbach, PhD
>
> ORISE Fellow, USEPA
>
> Office of Wetlands, Oceans & Watersheds
>

> W: (202) 566-1363 C Personal Phone / Ex. 6

> Views expressed are my own and do not necessarily represent those of the EPA.

>
>
>
>
>
>
>
> < Deliberative Process / Ex. 5 >

To: Cantilli, Robert[Cantilli.Robert@epa.gov]; Alexander, Laurie[Alexander.Laurie@epa.gov]
From: Kwok, Rose
Sent: Thur 4/20/2017 5:53:25 PM
Subject: FW: FYI tribal consultation letter distribution list
ESPruitt to Tribal Leaders 04-20-17.pdf

FYI – this is going to be sent to the via email to these folks (including an ORD group):

- EPA's Headquarters and Regional Indian Coordinators
- EPA National Tribal Caucus Members
- National Tribal Water Council Members
- ORD's National Tribal Science Council Members
- EPA's OW Tribal Coordinators, and a few key folks in AIEO
- AIEO's lists of Tribal Environmental Directors (separate email to be sent to each Region-specific list)

I had asked Donna to add you to the informal rule workgroup. I'm not sure if she has, so I'll remind her!

From: Christensen, Damaris

Sent: Thursday, April 20, 2017 1:49 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy

<Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>
Cc: Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Peterson, Carol <Peterson.Carol@epa.gov>; Yu, Yone <yu.yone@epa.gov>; Weaver, Kerryann <weaver.kerryann@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>
Subject: RE: FYI tribal consultation letter distribution list

And the tribal consultation letter is attached.

From: Christensen, Damaris
Sent: Thursday, April 20, 2017 1:45 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Jensen, Stacey M CIV USARMY HQDA (US) <Stacey.M.Jensen@usace.army.mil>; Montella, Daniel <Montella.Daniel@epa.gov>; Lapp, Jeffrey <lapp.jeffrey@epa.gov>; Shamet, Stefania <Shamet.Stefania@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Melgin, Wendy <melgin.wendy@epa.gov>; Schaller, Andrea <schaller.andrea@epa.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Schafer, Jeannette <schafer.jeannette@epa.gov>; McCarthy, Julia <McCarthy.Julia@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Leidy, Robert <Leidy.Robert@epa.gov>; Dean, Heather <Dean.Heather@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Cherry, Andrew <Cherry.Andrew@epa.gov>; Stokely, Peter <Stokely.Peter@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Flannery-Keith, Erin <Flannery-Keith.Erin@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Ludwig-Monty, Sarah <ludwig-monty.sarah@epa.gov>; Sachs, Erica <Sachs.Erica@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Balasa, Kate <balasa.kate@epa.gov>; Palomaki, Ashley <Palomaki.Ashley@epa.gov>; Somerville, Eric <Somerville.Eric@epa.gov>
Cc: Speir, Jeffrey <speir.jeffrey@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Peterson, Carol <Peterson.Carol@epa.gov>; Yu, Yone <yu.yone@epa.gov>; Weaver, Kerryann <weaver.kerryann@epa.gov>; Horchem, Brad <horchem.brad@epa.gov>
Subject: FYI tribal consultation letter distribution list

email distribution list for the tribal consultation letter will include:

- [redacted] EPA's Headquarters and Regional Indian Coordinators
- [redacted] EPA National Tribal Caucus Members
- [redacted] National Tribal Water Council Members
- [redacted] ORD's National Tribal Science Council Members
- [redacted] EPA's OW Tribal Coordinators, and a few key folks in AIEO
- [redacted] AIEO's lists of Tribal Environmental Directors (separate email to be sent to each Region-specific list)

Karen (our tribal coordinator) is also working to assemble a list of contacts from the organizations Army said were typically part of their outreach, and we'll send the letter to all groups where we can identify a POC.

Damaris



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 20, 2017

THE ADMINISTRATOR

Dear Tribal Leader:

The U.S. Environmental Protection Agency is initiating consultation and coordination with federally recognized Indian tribes on a forthcoming proposal to rescind and then revise the definition of "waters of the United States." (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). The EPA has invited the Department of Army to participate in this consultation and coordination.

This action follows the February 28, 2017, Presidential Executive Order 13778 on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The EO states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty and showing due regard for the roles of the Congress and the states under the Constitution. It also directs the agencies to review the existing Clean Water Rule for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law. Further, the EO directs the agencies to consider interpreting the term "navigable waters," as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

To meet the objective described in the EO, the agencies intend to follow an expeditious, two-step process that will provide certainty across the country: 1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit Court of Appeals' stay of the Clean Water Rule, has been the regulation in place since 1986 and thus maintains the status quo and 2) a second rulemaking to revise the definition of waters of the U.S. consistent with direction in the EO. Justice Scalia's *Rapanos* opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

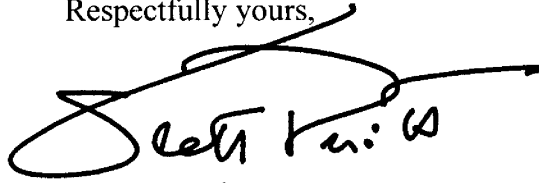
With this letter, the EPA is formally initiating consultation on the revised definition of "waters of the U.S." with federally recognized Indian tribes. This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (www.epa.gov/tribal/consultation/consult-policy.htm). The EPA invites you and your designated consultation representative(s) to participate. The EPA's anticipated timeline for the consultation and coordination period is expected to extend from April 20, 2017, to June 20, 2017. In addition, the coordination may extend through the end of the public comment period on the second rulemaking.

Enclosed is a consultation and coordination plan for this action that includes a description of the action under consultation and the process the EPA intends to follow, including a timeline for the consultation and coordination period and information on how you can provide input on this action. *This information is also available on the EPA's Tribal Portal.*

The official EPA contact person for this consultation and coordination process is Karen Gude, Office of Water Tribal Program Coordinator, at (202) 564-0831 or gude.karen@epa.gov. Please do not hesitate to contact Karen should you have any questions or if you would like to request alternate arrangements to the process outlined in the consultation plan.

Whether or not you participate in this consultation process, you will still have the opportunity to provide input on any regulatory action during the public comment period. The proposed rule will be published in the *Federal Register* and accessible at <https://www.regulations.gov>. I look forward to working with you on this important matter.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Scott Pruitt", with a large, stylized flourish extending from the end of the signature.

E. Scott Pruitt

Enclosure

cc: Tribal Environmental Directors
Regional Indian Coordinators
Douglas Lamont, Senior Official
Performing the Duties of the Assistant
Secretary of the Army for Civil Works

Consultation Plan

Background information on this initiative

From the 1970s through the 1990s, the majority of federal courts as well as the EPA and the Department of Army (the agencies) consistently interpreted a broad scope of Clean Water Act jurisdiction as necessary to and consistent with the Act's goals of protecting water quality. Supreme Court decisions in 2001 and 2006 held that the scope of navigable waters must be linked more directly to protecting the integrity of waters used in navigation. The Justices in the *Rapanos v. United States*, 547 U.S. 715 (2006) decision were split on how this was to be accomplished. The agencies have been working since the 2006 Supreme Court decision to provide clarification and predictability in the procedures used to identify waters that are – and are not – covered by the Clean Water Act. The 2015 Clean Water Rule, and the proposed new rulemaking effort, reflect the agencies' efforts to provide that needed clarification and predictability.

The February 28, 2017, executive order says that the EPA and the Army Corps “shall consider interpreting the term “navigable waters” in a manner “consistent with Justice Scalia’s opinion” in *Rapanos*. Justice Scalia’s opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

Since the EO was issued, the agencies have taken two actions. First, we published a *Federal Register* notice on March 6, 2017, called “Intention to Review and Rescind or Revise the Clean Water Rule.” The notice announces the EPA and Army’s intention to review and rescind or revise the 2015 Clean Water Rule, consistent with Justice Scalia’s opinion. Second, at the EPA’s request, on March 6, 2017, the Department of Justice advised the Sixth Circuit Court of Appeals that the agencies intend to consider rescinding or revising the Clean Water Rule. The notice is called for by the EO and is appropriate because of the ongoing Clean Water Rule-related litigation currently before that court. These items, as well as a link to the executive order, are on the EPA’s Clean Water Rule website at www.epa.gov/cleanwaterrule.

To meet the objective described in the EO, the agencies intend to follow an expeditious, two-step process that will provide certainty across the country: 1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit stay of the 2015 rule, has been the regulation in place since 1986 and thus maintains the status quo and 2) a rulemaking to revise the definition of “waters of the U.S.” consistent with direction in the February 28, 2017, EO to interpret the term “navigable waters” in a manner consistent with the opinion of Justice Scalia in *Rapanos*.

The definition of “waters of the U.S.” affects the implementation of Clean Water Act programs on tribal lands and lands upstream of tribal waters, including section 401 tribal and state certification requirements, under which tribes can request accommodation for environmental and cultural values within a federal permit; section 402 National Pollutant Discharge Elimination System permits, which regulate discharges of pollutants that may directly or indirectly reach jurisdictional waters; section 404 permits, which regulate the discharge of dredged or fill material; section 303, which calls for water quality standards; and section 311, which requires oil spill response and prevention plans.

The Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule can be found at www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic.

The Federal Register Notice of Intention to Review and Rescind or Revise the Clean Water Rule can be found at www.federalregister.gov/documents/2017/03/06/2017-04312/intention-to-review-and-rescind-or-revise-the-clean-water-rule.

Potential impacts to tribes

The EPA understands that decisions concerning whether a water body is subject to the Clean Water Act have consequences for tribal, state and local governments and for private parties. The agencies intend the first rulemaking is to preserve the status quo. Under the second proposed rulemaking, the EPA expects that the number of waters protected under the Clean Water Act will decrease compared both to current practice and the scope of the 2015 Clean Water Rule. As a result, businesses and governments that, for example, build homes and roads may face some decreased costs of the permitting process from offsetting the effects to aquatic resources from development. Those tribes that have 401 certification authorities may find that the number of permits requiring 401 certification decreases.

The Clean Water Act is one of the nation’s most effective environmental laws, calling for the federal government, tribes and states to work together to achieve the act’s goals. While tribes may request approval from the EPA to administer their own Clean Water Act section 402 and/or Clean Water Act section 404 permit program, to date no tribes have requested approval of a tribal 402 or 404 program. As a result, the EPA issues 402 permits and the Corps issues 404 permits in Indian country, and thus the burden for processing permit applications and conducting associated analyses will generally fall on the agencies.

Opportunities for tribes to participate

The tribal consultation process table below lays out the process and timeline for government-to-government consultation and coordination. The agencies are also looking for opportunities to discuss the rulemaking at in-person meetings.

Tribes may also participate in any public review and comment process. For more information, see the EPA’s website at www.epa.gov/cleanwaterrule.

Tribes may access this letter and related consultation information via the EPA’s Tribal Consultation Opportunities Tracking System, located at tcots.epa.gov.

The combined goal for all these efforts is to ensure there is sufficient information for tribal officials to make an informed decision about the desire to continue with consultation and to understand how to provide informed input.

Tribal Consultation Process and Timeline

April 20, 2017	Initiation of tribal consultation via mail and by electronic announcement	EPA Contact: Karen Gude, (202) 564-0831
April 27, 2017	Tribes-only Information Webinar	Webinar time: 2:00-3:30 Eastern Time To register: https://epawebconferencing.acms.com/wotus2/event/registration.html ; Call-in 1-866-299-3188, code 202-566-0657 EPA Contact: Rose Kwok, (202) 566-0657
May 18, 2017	Tribes-only Information Webinar	Webinar time: 1:30-3:30 Eastern Time To register: http://epawebconferencing.acms.com/cwa_wotus/event/registration.html ; Call-in 1-866-299-3188, code 202-566-0657 EPA Contact: Rose Kwok, (202) 566-0657
Public comment period	Tribes will be welcome to make additional comments and raise additional questions during the public comment period following rule proposal.	Once the rule has been proposed, EPA's website will contain information on the public comment process.
Additional meetings or webinars may be scheduled.		

To: Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 3/21/2017 12:03:13 AM
Subject: Re: **Deliberative Process / Ex. 5**

Thanks!!

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Kwok, Rose
Sent: Monday, March 20, 2017 8:02:39 PM
To: Auerbach, Daniel; Christensen, Damaris; Downing, Donna
Subject: Re: **Deliberative Process / Ex. 5**

Dan,

Deliberative Process / Ex. 5

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

From: Auerbach, Daniel
Sent: Friday, March 17, 2017 4:59:29 PM

To: Christensen, Damaris; Downing, Donna; Kwok, Rose
Cc: Bennett, Brittany; Kupchan, Simma; Eisenberg, Mindy
Subject: RE: **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Friday, March 17, 2017 3:59 PM
To: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Bennett, Brittany <bennett.brittany@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: **Deliberative Process / Ex. 5**

Thanks Dan – **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

Damaris

From: Auerbach, Daniel
Sent: Friday, March 17, 2017 3:38 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Fri 3/17/2017 1:52:43 PM
Subject: Re: WOTUS-2 Briefing Materials

Personal Phone / Ex. 6

Sent from my iPhone

On Mar 17, 2017, at 9:38 AM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Do you have Rachel's phone number(s)? Have to call her about People Plus asap. Thanks!

Donna

From: Christensen, Damaris
Sent: Friday, March 17, 2017 9:27 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Subject: Re: WOTUS-2 Briefing Materials

You already did one in 2014 but I can't find in my phone (on the way back from daycare)!

Sent from my iPhone

On Mar 17, 2017, at 8:52 AM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Deliberative Process / Ex. 5

Donna

From: Eisenberg, Mindy
Sent: Friday, March 17, 2017 8:52 AM
To: Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven

<Neugeboren.Steven@epa.gov>

Cc: Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann
<Campbell.Ann@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong,
Benita <Best-Wong.Benita@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>;
Christensen, Damaris <Christensen.Damaris@epa.gov>; Peck, Gregory
<Peck.Gregory@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan,
Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn
<wendelowski.karyn@epa.gov>

Subject: RE: WOTUS-2 Briefing Materials

I'm reviewing the documents in sharepoint right now.

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Goodin, John

Sent: Friday, March 17, 2017 7:46 AM

To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>

Cc: Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann
<Campbell.Ann@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong,
Benita <Best-Wong.Benita@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>;
Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy
<Eisenberg.Mindy@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wehling,

Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>;
Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: Re: WOTUS-2 Briefing Materials

Thanks for the late night dedication, Steve! Very helpful comments. Here are a few quick reactions...

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks again for the great work

John

Sent from my iPhone

On Mar 17, 2017, at 12:20 AM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

Some last input of the day from me.

First a few suggestions and requests, then a description of my comments on two documents I reviewed tonight – the options paper and other programs docs.

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Nite.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Downing, Donna

Sent: Thursday, March 16, 2017 5:58 PM

To: Campbell, Ann <Campbell.Ann@epa.gov>

Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: WOTUS-2 Briefing Materials

Hi Ann –

Attached please find the current version of the WOTUS-2 draft materials for the Administrator's briefing on Monday. The attachments include:

- Briefing one-pager
- Attachment 1: Timeline
- Attachment 2: Options
- Attachment 4: Impacts to CWA Programs

Deliberative Process / Ex. 5

Here's a link to the Sharepoint folder where these attached documents reside in case Steve or others want to continue editing:

https://usepa.sharepoint.com/sites/OW_Work/wus/2017/_layouts/15/guestaccess.aspx?guestaccesstoken=

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Fri 3/17/2017 1:26:39 PM
Subject: Re: WOTUS-2 Briefing Materials

You already did one in 2014 but I can't find in my phone (on the way back from daycare)!

Sent from my iPhone

On Mar 17, 2017, at 8:52 AM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Deliberative Process / Ex. 5

Donna

From: Eisenberg, Mindy
Sent: Friday, March 17, 2017 8:52 AM
To: Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS-2 Briefing Materials

I'm reviewing the documents in sharepoint right now.

Thanks!

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Goodin, John
Sent: Friday, March 17, 2017 7:46 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: Re: WOTUS-2 Briefing Materials

Thanks for the late night dedication, Steve! Very helpful comments. Here are a few quick reactions...

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks again for the great work

John

Sent from my iPhone

On Mar 17, 2017, at 12:20 AM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

Some last input of the day from me.

First a few suggestions and requests, then a description of my comments on two documents I reviewed tonight – the options paper and other programs docs.

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Nite.

Steven Neugeboren

Associate General Counsel

Water Law Office

Environmental Protection Agency

202-564-5488

From: Downing, Donna

Sent: Thursday, March 16, 2017 5:58 PM

To: Campbell, Ann <Campbell.Ann@epa.gov>

Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: WOTUS-2 Briefing Materials

Hi Ann –

Attached please find the current version of the WOTUS-2 draft materials for the Administrator's briefing on Monday. The attachments include:

- Briefing one-pager

- Attachment 1: Timeline
- Attachment 2: Options
- Attachment 4: Impacts to CWA Programs

Deliberative Process / Ex. 5

Here's a link to the Sharepoint folder where these attached documents reside in case Steve or others want to continue editing:

https://usepa.sharepoint.com/sites/OW_Work/wus/2017/_layouts/15/guestaccess.aspx?guestaccesstoken=Q

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Schafer, Jeannette[schafer.jeannette@epa.gov]; Kovac, Steve[Kovac.Steve@epa.gov]
From: Horchem, Brad
Sent: Thur 3/16/2017 10:52:10 PM
Subject: moving forward with Clean Water Rule

Donna,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

It would be helpful if you could help us to address our issues.

Thanks

Brad

To: Downing, Donna[Downing.Donna@epa.gov]
From: Campbell, Ann
Sent: Thur 3/16/2017 10:12:49 PM
Subject: Re: WOTUS-2 Briefing Materials

Thanks Donna. Are you still expecting edits to the attached docs?

On Mar 16, 2017, at 5:58 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Hi Ann –

Attached please find the current version of the WOTUS-2 draft materials for the Administrator's briefing on Monday. The attachments include:

- Briefing one-pager
- Attachment 1:
- Attachment 2: **Deliberative Process / Ex. 5**
- Attachment 4:

Deliberative Process / Ex. 5

Here's a link to the Sharepoint folder where these attached documents reside in case Steve or others want to continue editing:

Nonresponsive Internal URL/ Ex. 6

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

<Attachment 4 WOTUS2 Effects on Other Programs.docx>

<Attachment 2 Options for Scalia test v1.docx>

<WOTUS2 briefing paper 3-16-17.docx>

<Attachment 1 Rule Timeline short v4.xlsx>

To: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Thur 3/16/2017 5:22:45 PM
Subject: TPs
TPs for Regions 3-16-17.docx
TALKING POINTS Clean Water Rule Revision 3.9.17 .docx

Donna,

Deliberative Process / Ex. 5

Damaris

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Brown, Sineta[Brown.Sineta@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Wed 3/15/2017 8:39:07 PM
Subject: CMS assignments
Martin AX-17-000-5060 v2.docx
Nally AX-17-000-1991 v2.docx

Mindy,

Attached are rewrites of the CMS responses we discussed today. Hopefully they address your concerns; I'm happy to make additional edits. I know this probably isn't in the right format but I see these are due for signature soon so I copied everyone.

Damaris

-----Original Message-----

From: Downing, Donna
Sent: Friday, March 03, 2017 2:44 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: FW: CMS New Assignment - Yvonne Smothers - AX-17-000-5060

Hi Damaris --

Could you draft a response to the attached control re: waters of the US? It's due for signature March 15th, so having a draft by Thursday the 9th would be helpful so that Mindy can have some time to edit if she wishes.

This is one of two; the other one likely could be addressed by taking text from the press release (it asks us to rescind the CWR...)

Thanks!

Donna

-----Original Message-----

From: Brown, Sineta
Sent: Wednesday, March 01, 2017 4:14 PM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: FW: CMS New Assignment - Yvonne Smothers - AX-17-000-5060

Donna,

Attached is a control from Paul and Joyce Martin, RE: EPA propose and work to publish the exact waters where the proposed Waters of the United States rule would apply under the Clean Water Act. The due date is March 15, 2017. The control is for Mindy's signature. If you have any questions, please feel free to stop by, give me a call or send me an email message.

Thank you.

Sineta Brown
Program Analyst
Office of Wetlands Oceans and Watersheds Wetlands Division
202-564-3666

-----Original Message-----

From: cmsadmin@epa.gov [mailto:cmsadmin@epa.gov]
Sent: Wednesday, March 01, 2017 2:59 PM
To: Goodin, John <Goodin.John@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Miller, Clay <Miller.Clay@epa.gov>; Brown, Sineta <Brown.Sineta@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: CMS New Assignment - Yvonne Smothers - AX-17-000-5060

Control AX-17-000-5060 has been assigned to your office on 3/1/17 2:58 PM by Yvonne Smothers.
Please go to the CMS webpage to view the details of the control.

Summary Information -

Control Number: AX-17-000-5060

Control Subject: Urge - EPA propose and work to publish the exact waters where the proposed Waters of the United States rule would apply under the Clean Water Act.

From: Martin, Paul D; Martin, Joyce

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at <https://cms.epa.gov/cms>. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Keating, Jim
Sent: Wed 3/15/2017 6:35:18 PM
Subject: FW: Waters of the US Report

Deliberative Process / Ex. 5

From: Keating, Jim
Sent: Wednesday, March 15, 2017 2:27 PM
To: Hisel-McCoy, Sara <Hisel-McCoy.Sara@epa.gov>; Barash, Shari <Barash.Shari@epa.gov>; Buffo, Corey <Buffo.Corey@epa.gov>; Martinez, Menchu <martinez.menchu-c@epa.gov>; Vlcan, Manjali <Vlcan.Manjali@epa.gov>; Wilcut, Lars <Wilcut.Lars@epa.gov>; Fleisig, Erica <Fleisig.Erica@epa.gov>; Anderson, Danielle <Anderson.Danielle@epa.gov>
Subject: Waters of the US Report

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 3/14/2017 9:58:02 PM
Subject: WOTUS2_briefingTableShort - clean.docx
WOTUS2_briefingTableShort - clean.docx

Attached and on Sharepoint.

Open WOTUS2_briefingTableShort - clean.docx

To: Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 3/14/2017 7:49:17 PM
Subject: FW: WOTUS2_briefTPs.docx
WOTUS2_briefTPs.docx

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Damaris

From: Christensen, Damaris
Sent: Tuesday, March 14, 2017 2:48 PM
To: 'Jensen, Stacey M CIV USARMY HQDA (US)' <Stacey.M.Jensen@usace.army.mil>
Subject: WOTUS2_briefTPs.docx

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Damaris

To: Downing, Donna[Downing.Donna@epa.gov]
From: Auerbach, Daniel
Sent: Tue 3/14/2017 3:47:10 PM
Subject: Re: For 11am meeting -- some edits to briefing paper shown in redline
WOTUS2 briefingTable.docx

From: Downing, Donna
Sent: Tuesday, March 14, 2017 10:47 AM
To: Jensen, Stacey M CIV USARMY HQDA (US); Moyer, Jennifer A CIV USARMY CEHQ (US); David.F.Dale@usace.army.mil; Christensen, Damaris; Kwok, Rose; Auerbach, Daniel; Bennett, Brittany; Goodin, John; Hewitt, Julie; Kupchan, Simma; Wehling, Carrie; Keating, Jim; Frazer, Brian; Wilson, John Maxwell (Max) CIV USARMY CEHQ (US; Campbell, Ann; Eisenberg, Mindy; Doley, Todd; Bahk, Benjamin; Cherry, Andrew; Stokely, Peter; Theis, Joseph; Pollins, Mark
Subject: For 11am meeting -- some edits to briefing paper shown in redline

DELIBERATIVE PROCESS; CONFIDENTIAL

Hi everybody –

Attached is a copy of the briefing paper, with a couple of edits to the document sent last night shown in redline/strikeout. We'll be discussing this at the 11am meeting.

Talk to you soon!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 3/14/2017 2:45:25 PM
WOTUS2 briefing paper 3.13.17 - clean.docx

Rose Kwok

U.S. Environmental Protection Agency

Wetlands Division

kwok.rose@epa.gov

202-566-0657, 202-566-1375 (fax)

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Mon 3/13/2017 11:46:09 PM
Subject: Table for Options 3-8-2017 v4.docx
Table for Options 3-8-2017 v4.docx

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Mon 3/13/2017 11:32:47 PM
Subject: Briefing paper
[WOTUS2 briefing paper 3.13.17 - clean.docx](#)
[WOTUS2 briefing paper 3.13.17.docx](#)

Will follow up with table

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Mon 3/13/2017 9:05:48 PM
Subject: other program effects.docx
[other program effects.docx](#)

Deliberative Process / Ex. 5

Damaris

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Linn, Jennifer[Linn.Jennifer@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]
From: Bennett, Brittany
Sent: Thur 3/9/2017 4:27:45 PM
Subject: RE: JD Team Meeting Notes
JD Notes - Issues and Moving Pieces - 3.9.17.docx

See updated version.

Brittany K. Bennett

Ecologist

U.S. EPA, Office of Water
ph: 202.564.1896

Bennett.Brittany@epa.gov

From: Bennett, Brittany
Sent: Thursday, March 09, 2017 11:11 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>
Subject: JD Team Meeting Notes

Rough draft of issues and moving pieces discussed at the 3/9/17 JD Meeting

B

Brittany K. Bennett

Ecologist

U.S. EPA, Office of Water
ph: 202.564.1896

Bennett.Brittany@epa.gov

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Thur 3/9/2017 3:04:28 PM
Subject: RE: Table for Options 3-8-2017 dc.docx
Table for Options 3-8-2017 v2 redline.docx
Table for Options 3-8-2017 v2 redline.docx

From: Downing, Donna
Sent: Thursday, March 09, 2017 9:06 AM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: Table for Options 3-8-2017 dc.docx

Deliberative Process / Ex. 5

Donna

From: Christensen, Damaris
Sent: Wednesday, March 08, 2017 10:17 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Table for Options 3-8-2017 dc.docx

Deliberative Process / Ex. 5^m

D

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Thur 3/9/2017 2:04:24 PM
Subject: RE: Table for Options 3-8-2017 dc.docx
Table for Options 3-8-2017 dc RMK.docx

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Wednesday, March 08, 2017 10:17 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: Table for Options 3-8-2017 dc.docx

Deliberative Process / Ex. 5

D

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Thur 3/9/2017 3:16:36 AM
Subject: Table for Options 3-8-2017 dc.docx
[Table for Options 3-8-2017 dc.docx](#)

Deliberative Process / Ex. 5

D

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Wed 3/8/2017 10:50:23 PM
Subject: Table v1
Table for Options 3-8-2017.docx

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Wed 3/8/2017 6:03:41 PM
Subject: Regions have asked for EO/WOTUS2 TPs
[TPs for Regions 3-8-17.docx](#)

Deliberative Process / Ex. 5

Damaris

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Bennett, Brittany[bennett.brittany@epa.gov]
From: Auerbach, Daniel
Sent: Wed 3/8/2017 3:46:28 PM
Subject: Re: Talking points on Clean Water Rule

look good to me. only thing might be to consider **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

and perhaps you'd articulate something along the lines of **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Wednesday, March 8, 2017 10:45:45 AM
To: Downing, Donna; Kwok, Rose
Cc: Auerbach, Daniel; Bennett, Brittany
Subject: RE: Talking points on Clean Water Rule

Two more things –

1. I realized I hadn't deleted a bullet point in the background where I'd decided to use different wording and
2. Of course we'll need to get OGC review

From: Christensen, Damaris
Sent: Wednesday, March 08, 2017 10:38 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>
Subject: RE: Talking points on Clean Water Rule

Hey –

I just heard from Eric and it sounds like Tony had reached out to Donna and Rose, asking for TPs the Regions could use. I think that's a very fair ask, and honestly it could be helpful to me as

I talk to the national Tribal Water Council today as well.

I took the TPs for the WDDs and deleted the internal discussion of next steps and put in some background, because as Eric reminded me, many people are coming to this topic fresh.

Thoughts? Comments?

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]
From: Christensen, Damaris
Sent: Wed 3/8/2017 3:37:59 PM
Subject: RE: Talking points on Clean Water Rule
TPs for Regions 3-8-17.docx

Hey –

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

To: **Personal Address / Ex. 6**
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Wed 3/8/2017 7:56:17 AM
Subject: Re: For quick review: Draft TPs on WOTUS-2 for Mike's Wednesday afternoon teleconference with the WAtEr Division Directors

Deliberative Process / Ex. 5

Damaris

Sent from my iPhone

On Mar 7, 2017, at 11:21 PM, Donna Downing <donnadowning1@verizon.net> wrote:

Hi Mindy, Rose, and Damaris –

Mike is having his monthly call with the Water Division Directors tomorrow afternoon, and has requested some talking points about WOTUS-2. Attached are some draft TPs. Please let me know if you have suggested edits or other thoughts.

Deliberative Process / Ex. 5 **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 I'm attaching the draft TPs as a Word file, and also for you smart phone users as a text file embedded below.

Thanks for any thoughts you may have. See you tomorrow!

Donna

**TALKING POINTS FOR TALKING WITH THE WATER DIVISION DIRECTORS
ABOUT THE WOTUS-2 RULEMAKING**

3/7/17

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Questions?

<TPs for conversation with WDDs on WOTUS-2 v1.docx>

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]
Cc: Bennett, Brittany[bennett.brittany@epa.gov]
From: Kwok, Rose
Sent: Wed 3/8/2017 12:28:15 AM
Subject: RE: some thoughts for discussion about next steps
WOTUS2 policy and process asks v2.docx
people tasks WOTUSredo v2.docx

Thanks, Damaris, for taking a first cut. I have some thoughts on the Process Options piece (not attached) but didn't have time to write them all down. Here are my thoughts on the other two.

Deliberative Process / Ex. 5

One thing that I'll need management guidance on is if

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I didn't see a good place to put it on any of the documents since it's my request to our management and not our management's request to senior management.

I think we should

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Friday, March 03, 2017 10:44 AM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>
Subject: some thoughts for discussion about next steps

Are we meeting sometime today?

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 3/7/2017 10:48:56 PM
Subject: WOTUS2 briefing paper with OGC changes v2.docx
WOTUS2 briefing paper with OGC changes v2.docx

To: Downing, Donna[Downing.Donna@epa.gov]
From: Nickerson, William
Sent: Tue 3/7/2017 6:13:29 PM
Subject: RE: For review: Draft 1-pager on the re-do of the WOTUS rule
WOTUS2 next steps v3 bn.docx

Suggestions attached.

From: Downing, Donna
Sent: Monday, March 06, 2017 7:44 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: For review: Draft 1-pager on the re-do of the WOTUS rule

Hi everybody:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
From: Bennett, Brittany
Sent: Tue 3/7/2017 5:13:58 PM
Subject: RE: For review: Draft 1-pager on the re-do of the WOTUS rule
WOTUS2 next steps v3 BKB.docx

Hi Donna – attached are my minor edits. I didn't make substantive edits per OGCs and Ann's

Deliberative Process / Ex. 5

B

Brittany K. Bennett

Ecologist

U.S. EPA, Office of Water
ph: 202.564.1896

Bennett.Brittany@epa.gov

From: Downing, Donna
Sent: Tuesday, March 07, 2017 11:59 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>
Subject: Re: For review: Draft 1-pager on the re-do of the WOTUS rule

I'm game! We figured the one-pager would spur discussion and are pleased it has.

Donna

Sent from my iPhone

On Mar 7, 2017, at 11:57 AM, Campbell, Ann <Campbell.Ann@epa.gov> wrote:

Donna, Mike had some direction he gave to me on this. It will take me some time to pull together comments (I won't make it by 1p). and it may be easier if we can, as a group, sit down for 30 minutes or so later today to go over where the paper is at and Mike's thoughts. If folks are game I'll set something up.

Ann

On Mar 6, 2017, at 7:44 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Hi everybody:

At today's meeting we had a broad discussion on how best to present in a one-pager the options, timeline implications, and other issues associated with a re-do of the WOTUS regulatory definition. Attached please find a first draft that hopefully reflects much of that discussion. As suggested at the meeting, let's collectively review and suggest how best to turn this draft into what we need for briefing the Administrator and others.

Please send me suggested edits and other thoughts by 1pm tomorrow (ideally in redline/strikeout)(no penalty for being early!). I'll work with Mindy and John to harmonize input and turn around a revised draft by mid-afternoon tomorrow.

Thanks!

Donna

Donna Downing

Acting Chief, Wetlands and Aquatic Resources Regulatory Branch

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

<WOTUS2 next steps v3.docx>

To: Flaharty, Stephanie[Flaharty.Stephanie@epa.gov]; Nelson, Tomeka[Nelson.Tomeka@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
From: Evalenko, Sandy
Sent: Tue 3/7/2017 12:41:05 PM
Subject: Your FRNs published yesterday

FYI --

2 OW FRNs published today --

1. WOTUS FRN

Intention to Review and Rescind or Revise Clean Water Rule, 12532 <https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04312.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04312.htm>

2. FRN extending the public comment period one month published today-- the day comments would have been due to EPA.

The comment period is moved out 30 days from March 6th to April 5
Requests for Nominations: Period to Review Materials to Inform Derivation of a Water Concentration Value for Lead in Drinking Water, 12591 <https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-03466.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-03466.htm>

-----Original Message-----

From: EPA Federal Register [mailto:envsubset@epa.gov]
Sent: Monday, March 06, 2017 10:15 AM
To: Federal Register documents <epafr-all@lists.epa.gov>
Subject: [epafr-all] Table of Contents, March 6, 2017

A single listserv is used to send a copy of the Federal Register table of contents to each of the previous list subscribers. The e-mail includes links and topic tags for the notices that were previously included in the Environmental Subset Web site and topical listservs. It also includes the table of contents for the Federal Register of that day. Subscribers no longer receive the full-text of FR notices. The official source for the electronic Federal Register is the Government Printing Office (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>). More information is also available from Regulations.gov (<http://www.regulations.gov/>).

AIR

List of Hazardous Air Pollutants:

Granting Petitions to Add n-Propyl Bromide, 12589 <https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04168.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04168.htm>

IMPACT

Environmental Impact Statements; Availability, etc.:

Columbia Gas Transmission, LLC; Columbia Gulf Transmission, LLC;
Mountaineer Xpress and Gulf Xpress Projects, 12582-12584 <https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-03466.pdf>

06/pdf/2017-04303.pdf
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04303.htm>

Environmental Impact Statements; Availability, etc.:
Cape Wind Energy Project, 12636-12637
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04247.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04247.htm>

SPECIES

Endangered and Threatened Species:
Technical/Agency Draft Recovery Plan for Yellowcheek Darter, 12632-12633
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04279.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04279.htm>

TOXICS

Risk Evaluation Scoping Efforts under TSCA for Ten Chemical Substances; Reopening of Comment Period, 12589-12590 <https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04316.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04316.htm>

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12590-12591
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04166.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04166.htm>

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Safer Choice Logo Redesign Consultations, 12591-12592 <https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04167.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04167.htm>

WATER

Requests for Nominations:
Period to Review Materials to Inform Derivation of a Water
Concentration Value for Lead in Drinking Water, 12591 <https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-03466.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-03466.htm>

Intention to Review and Rescind or Revise Clean Water Rule, 12532 <https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/pdf/2017-04312.pdf>
<https://www.gpo.gov/fdsys/pkg/FR-2017-03-06/html/2017-04312.htm>

TODAY'S FULL TABLE OF CONTENTS - <http://www.gpo.gov/fdsys/search/getfrtoc.action>

Federal Register / Vol. 82, No. 42 / Monday, March 6, 2017 / Contents

[[Page iii]]

Agency for Healthcare Research and Quality NOTICES Supplemental Evidence and Data for Systematic Reviews Request:

Effects of Dietary Sodium and Potassium Intake on Chronic Disease
Outcomes and Related Risk Factor, 12605-12610

Agriculture Department

See Food and Nutrition Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and

Approvals:

National Animal Health Monitoring System; Antimicrobial Use
Studies, 12533

Antitrust Division

NOTICES

Changes under the National Cooperative Research and Production Act:

National Armaments Consortium, 12638-12639

National Spectrum Consortium, 12637-12638 Membership Changes under the National Cooperative
Research and

Production Act:

IMS Global Learning Consortium, Inc., 12639

ODVA, Inc., 12638

Open Mobile Alliance, 12639

Census Bureau

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and

Approvals:

2017 Puerto Rico Census Test, 12535

2018 End-to-End Census Test--Address Canvassing Operation, 12535

Centers for Medicare & Medicaid Services RULES Medicaid and Children's Health Insurance Programs:

Medicaid Managed Care, CHIP Delivered in Managed Care, and

Revisions Related to Third Party Liability; Corrections,

12509-12510

Civil Rights Commission

NOTICES

Meetings:

Maine Advisory Committee, 12535

Commerce Department

See Census Bureau

See Foreign-Trade Zones Board

See Industry and Security Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

Community Living Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Centers for Independent Living Annual Performance Report; Correction, 12610-12611

Meetings:

Administration on Intellectual and Developmental Disabilities, President's Committee for People with Intellectual Disabilities, 12610

Defense Department

See Engineers Corps

See Navy Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12575-12576

Charter Renewals:

National Security Education Board, 12575

Education Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Evaluation of the ESSA Title I, Part C, Migrant Education Programs (Recruitment phase), 12576-12577

Energy Department

See Federal Energy Regulatory Commission NOTICES Proposed Subsequent Arrangements, 12577

Engineers Corps

PROPOSED RULES

Intention to Review and Rescind or Revise Clean Water Rule, 12532

Environmental Protection Agency

PROPOSED RULES

Intention to Review and Rescind or Revise Clean Water Rule, 12532 NOTICES Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12590-12591

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Safer Choice Logo Redesign Consultations, 12591-12592 List of Hazardous Air Pollutants:

Granting Petitions to Add n-Propyl Bromide, 12589 Requests for Nominations:

Period to Review Materials to Inform Derivation of a Water

Concentration Value for Lead in Drinking Water, 12591 Risk Evaluation Scoping Efforts under TSCA for Ten Chemical Substances;

Reopening of Comment Period, 12589-12590

Federal Aviation Administration
RULES

Class E Airspace; Amendments:
Barter Island, AK, 12503-12504
Mapleton, IA, 12505-12506
Paragould, AR, 12504-12505

PROPOSED RULES

Class E Airspace; Establishments:
Grayling, AK, 12525-12526

Establishment of Restricted Areas:

R-2201 A, B, C, D, E, F, G, H, and J; Fort Greely, AK, 12529-12531

[[Page iv]]

R-2205 A, B, C, D, E, F, G and H, and Revocation of Restricted Area

R-2205; Fairbanks, AK, 12526-12529 VOR Federal Airways; Amendments:

Eastern United States, 12523-12525

V-7 and V-67; TN, 12522-12523

Federal Communications Commission
RULES

Review of Foreign Ownership Policies for Broadcast, Common Carrier and
Aeronautical Radio Licensees, 12512-12521 NOTICES Agency Information Collection Activities;
Proposals, Submissions, and
Approvals, 12592-12594

Incentive Auction Task Force and Media Bureau Announce Procedures for
Post-Incentive Auction Broadcast Transition, 12594-12602

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 12602

Federal Emergency Management Agency
RULES

Flood Elevation Determinations, 12510-12512 NOTICES Flood Hazard Determinations, 12627-12629
Flood Hazard Determinations; Proposals, 12626

Meetings:

Technical Mapping Advisory Council, 12627

Federal Energy Regulatory Commission
NOTICES

Applications:

Guthrie Natural Gas, 12587-12588

Steppe Petroleum USA Inc., Bakken Hunter, LLC, 12577-12578 Combined Filings, 12578-12582,
12586-12589 Environmental Impact Statements; Availability, etc.:

Columbia Gas Transmission, LLC; Columbia Gulf Transmission, LLC;

Mountaineer Xpress and Gulf Xpress Projects, 12582-12584

Filings:

Perkins, Zac, 12582

Initial Market-Based Rate Filings Including Requests for Blanket

Section 204 Authorizations:

Innovative Solar 37, LLC, 12584-12585

MS Solar 2, LLC, 12587
Petitions for Declaratory Orders:
MPLX Ozark Pipe Line, LLC, 12585
Records Governing Off-the-Record Communications, 12581-12582 Staff Attendances, 12577, 12585-12586

Federal Motor Carrier Safety Administration NOTICES Qualification of Drivers; Exemption Applications:
Hearing, 12682-12683
Vision, 12675-12687

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12687-12689

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 12602-12605

Fish and Wildlife Service
NOTICES
Endangered and Threatened Species:
Technical/Agency Draft Recovery Plan for Yellowcheek Darter, 12632-12633

Food and Drug Administration
PROPOSED RULES
Color Additive Petitions:
DSM Biomedical, 12531
NOTICES
Determination That FLONASE (Fluticasone Propionate) Nasal Spray, 0.05 Milligram, was Not Withdrawn from Sale for Reasons of Safety or Effectiveness, 12613-12614
Issuance of Priority Review Voucher; Rare Pediatric Disease Product, 12614
Meetings:
Patient-Focused Drug Development for Autism, 12611-12613

Food and Nutrition Service
NOTICES
Summer Food Service Program 2017 Reimbursement Rates, 12533-12535

Foreign Assets Control Office
NOTICES
Blocking or Unblocking of Persons and Properties, 12702

Foreign-Trade Zones Board

NOTICES

Production Activities:

Brake Parts Inc., Foreign-Trade Zone 176, Rockford, IL, 12536 Subzone Status; Approvals:
TopShip, LLC, Gulfport, MS, 12536

Health and Human Services Department

See Agency for Healthcare Research and Quality See Centers for Medicare & Medicaid Services See
Community Living Administration See Food and Drug Administration See National Institutes of Health
RULES 340B Drug Pricing Program Ceiling Price and Manufacturer Civil Monetary

Penalties; Delay of Effective Date, 12508-12509 NOTICES Agency Information Collection

Activities; Proposals, Submissions, and

Approvals, 12615

Meetings:

2018 Physical Activity Guidelines Advisory Committee, 12614-12615

Homeland Security Department

See Federal Emergency Management Agency

See U.S. Citizenship and Immigration Services See U.S. Customs and Border Protection

Industry and Security Bureau

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and
Approvals:

Technical Data Letter of Explanation, 12536

Interior Department

See Fish and Wildlife Service

[[Page v]]

See National Park Service

See Ocean Energy Management Bureau

International Trade Administration

NOTICES

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Certain Crystalline Silicon Photovoltaic Products from People's

Republic of China, 12562-12564

Certain Frozen Warmwater Shrimp from India, 12544-12550

Certain Frozen Warmwater Shrimp from Thailand, 12540-12544

Certain Hardwood Plywood Products from People's Republic of China,
12538

Certain Magnesite Carbon Bricks from People's Republic of China,
12550

Certain New Pneumatic Off-the-Road Tires from India, 12553-12555

Certain New Pneumatic Off-The-Road Tires from India and Sri Lanka,
12556-12558

Certain Preserved Mushrooms from People's Republic of China, 12564-
12566

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled
into Modules; Certain Crystalline Silicon Photovoltaic

Products from People's Republic of China, 12558-12561
Gray Portland Cement and Cement Clinker from Japan, 12561-12562
Large Residential Washers from Mexico, 12538-12540
Large Residential Washers from Republic of Korea, 12536-12538
Multilayered Wood Flooring from People's Republic of China, 12555-12556
Opportunity to Request Administrative Review, 12551-12553

International Trade Commission
NOTICES

Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Integrated Circuits with Voltage Regulators and Products
Containing Same Commission Determination Not to Review
Initial Determination Amending Complaint and Notice of
Investigation, 12637

Justice Department
See Antitrust Division

National Endowment for the Arts
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and
Approvals, 12639-12640

National Foundation on the Arts and the Humanities See National Endowment for the Arts

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and
Approvals:
Cancer Therapy Evaluation Program Support Contracts Forms and
Surveys, NCI, NIH, 12618-12621
Generic Clearance for Collection of Qualitative Feedback on Agency
Service Delivery, National Cancer Institute, 12616-12617
National Cancer Institute Genomic Data Commons (GDC) Data
Submission Request Form, 12617-12618
Meetings:
Center for Scientific Review, 12618
Eunice Kennedy Shriver National Institute of Child Health and Human
Development, 12616
Eunice Kennedy Shriver National Institute of Child Health and Human
Development; Correction, 12615-12616
National Cancer Institute, 12622
National Center for Complementary and Integrative Health, 12618,
12621-12622

National Oceanic and Atmospheric Administration NOTICES Agency Information Collection Activities;
Proposals, Submissions, and
Approvals:
Conflict of Interest Disclosure for Nonfederal Government

Individuals Who Are Candidates to Conduct Peer Reviews,
12567

Meetings:

Fisheries of the South Atlantic; Southeast Data, Assessment, and
Review; Pre-Assessment Webinar for Atlantic Blueline
Tilefish, 12568

Gulf of Mexico Fishery Management Council, 12567-12568

New England Fishery Management Council, 12566-12567 Takes of Marine Mammals Incidental to
Specified Activities:

Rocky Intertidal Monitoring Surveys along Oregon and California
Coasts, 12568-12575

National Park Service

NOTICES

National Register of Historic Places:

Pending Nominations and Related Actions, 12633-12636

Navy Department

NOTICES

Government-Owned Inventions; Available for Licensing, 12576

Nuclear Regulatory Commission

NOTICES

Licenses to Export Radioactive Waste; Correction, 12641 Licenses to Import Radioactive Waste;
Correction, 12640-12641

Ocean Energy Management Bureau

NOTICES

Environmental Impact Statements; Availability, etc.:

Cape Wind Energy Project, 12636-12637

Pipeline and Hazardous Materials Safety Administration NOTICES Hazardous Materials:

Applications for Special Permits, 12689-12702

Postal Regulatory Commission

RULES

Revising Procedures for Freedom of Information Act, 12506-12508

Presidential Documents

PROCLAMATIONS

Special Observances:

American Red Cross Month (Proc. 9574), 12705-12708

Irish-American Heritage Month (Proc. 9575), 12709-12710

Women's History Month (Proc. 9576), 12711-12712

[[Page vi]]

Securities and Exchange Commission

NOTICES

Applications:

Touchstone Investment Trust, et al., 12662-12663 IFRS Taxonomy:
Foreign Private Issuers That Prepare their Financial Statements in
Accordance with International Financial Reporting Standards
as Issued by International Accounting Standards Board,
12641-12642

Self-Regulatory Organizations; Proposed Rule Changes:

Chicago Board Options Exchange, Inc., 12667-12671
Investors Exchange, LLC, 12653-12656
Miami International Securities Exchange, LLC, 12656-12658
NASDAQ PHLX, LLC, 12671-12673
NASDAQ Stock Market, LLC, 12649-12653
New York Stock Exchange, LLC, 12642-12646, 12658-12662
NYSE Arca, Inc., 12663-12667
NYSE MKT, LLC, 12646-12649

Small Business Administration

NOTICES

Disaster Declarations:

Kansas, Public Assistance Only, 12674
Nevada, 12673-12674

State Department

NOTICES

Culturally Significant Objects Imported for Exhibition:

Egypt-Greece-Rome: Cultures in Contact, 12674

Transportation Department

See Federal Aviation Administration

See Federal Motor Carrier Safety Administration See Federal Railroad Administration See Pipeline and
Hazardous Materials Safety Administration

Treasury Department

See Foreign Assets Control Office

U.S. Citizenship and Immigration Services NOTICES Temporary Protected Status; Extensions and
Redesignations:

El Salvador, 12629-12632

U.S. Customs and Border Protection

NOTICES

Commercial Gaugers and Laboratories; Accreditations and Approvals:

Inspectorate America Corp., 12622-12625

Veterans Affairs Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Ankle Conditions Disability Benefits Questionnaire, 12702-12703

Neck (Cervical Spine) Conditions Disability Benefits Questionnaire, 12703

Wrist Conditions Disability Benefits Questionnaire, 12703-12704

Separate Parts In This Issue

Part II

Presidential Documents, 12705-12712

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

You are currently subscribed to epafr-all as: evalenko.sandy@epa.gov

To unsubscribe, send a blank email to leave-1647822-2138039.fc1df2c79a42bc445d9bb8232ca11ba8@lists.epa.gov

OR:

Use the listserver's web interface at https://lists.epa.gov/read/all_forums/ to manage your subscription.

For problems with this list, contact epafr-all-Owner@lists.epa.gov

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Mon 3/6/2017 7:50:00 PM
Subject: WOTUS2 next steps 3-6-17.docx
WOTUS2 next steps 3-6-17.docx

A drafty draft but my thoughts of what was asked for at today's meeting. If I'm completely off base feel free to use for scrap. ☺

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Brown, Sineta[Brown.Sineta@epa.gov]
From: Christensen, Damaris
Sent: Sat 3/4/2017 2:43:16 AM
Subject: RE: CMS New Assignment - Yvonne Smothers - AX-17-000-4991
[Martin AX-17-000-5060.docx](#)
[Nally AX-17-000-1991.docx](#)

Deliberative Process / Ex. 5

Damaris

-----Original Message-----

From: Downing, Donna
Sent: Friday, March 03, 2017 2:46 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: FW: CMS New Assignment - Yvonne Smothers - AX-17-000-4991

Hi Damaris --

Deliberative Process / Ex. 5

Thanks!

Donna

-----Original Message-----

From: Brown, Sineta
Sent: Wednesday, March 01, 2017 11:44 AM
To: Downing, Donna <Downing.Donna@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: FW: CMS New Assignment - Yvonne Smothers - AX-17-000-4991

Good Morning Donna,

Deliberative Process / Ex. 5

Thank you.

Sineta Brown
Program Analyst
Office of Wetlands Oceans and Watersheds Wetlands Division
202-564-3666

-----Original Message-----

From: cmsadmin@epa.gov [mailto:cmsadmin@epa.gov]
Sent: Wednesday, March 01, 2017 10:40 AM
To: Goodin, John <Goodin.John@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Miller, Clay <Miller.Clay@epa.gov>; Brown, Sineta <Brown.Sineta@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: CMS New Assignment - Yvonne Smothers - AX-17-000-4991

Control AX-17-000-4991 has been assigned to your office on 3/1/17 10:39 AM by Yvonne Smothers. Please go to the CMS webpage to view the details of the control.

Summary Information -

Control Number: AX-17-000-4991

Control Subject: Waters of the United States

From: Nally, Joseph L.

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at <https://cms.epa.gov/cms>. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS.Information@epa.gov.

To: Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Fri 3/3/2017 9:47:52 PM
Subject: RE: For your input-- Comparison of key bills amending the CWA's definition of "waters of the US"

Deliberative Process / Ex. 5

From: Auerbach, Daniel
Sent: Friday, March 03, 2017 4:08 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: Re: For your input-- Comparison of key bills amending the CWA's definition of "waters of the US"

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Friday, March 3, 2017 3:14:35 PM
To: Kwok, Rose; Christensen, Damaris; Auerbach, Daniel
Subject: For your input-- Comparison of key bills amending the CWA's definition of "waters of the US"

Hi Rose, Damaris, and Dan:

Attached is a version of the table comparing two bills addressing waters of the US.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks for whatever thoughts you might have!

Donna

From: Downing, Donna

Sent: Friday, January 27, 2017 2:37 PM

To: Auerbach, Daniel <Auerbach.Daniel@epa.gov>

Cc: Able, Tony <Able.Tony@epa.gov>; Evans, David <Evans.David@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: Re: FYI -- Comparison of key bills amending the CWA's definition of "waters of the US"

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Donna

On Jan 27, 2017, at 1:53 PM, Auerbach, Daniel <Auerbach.Daniel@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Able, Tony

Sent: Friday, January 27, 2017 12:49 PM

To: Downing, Donna <Downing.Donna@epa.gov>

Cc: Evans, David <Evans.David@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>;

Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel

<Auerbach.Daniel@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: RE: FYI -- Comparison of key bills amending the CWA's definition of "waters of the US"

Answers/suggestions. I'm copying Mindy

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

404 821 9066 (Cell)

From: Downing, Donna
Sent: Friday, January 27, 2017 11:00 AM
To: Able, Tony <Able.Tony@epa.gov>
Cc: Evans, David <Evans.David@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>
Subject: RE: FYI -- Comparison of key bills amending the CWA's definition of "waters of the US"

Hi Tony:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Donna

PS so you don't have to search in email for the table under discussion, I'm reattaching it here.

From: Able, Tony

Sent: Friday, January 27, 2017 10:18 AM

To: Downing, Donna <Downing.Donna@epa.gov>

Cc: Evans, David <Evans.David@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>

Subject: RE: FYI -- Comparison of key bills amending the CWA's definition of "waters of the US"

Deliberative Process / Ex. 5

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

404 821 9066 (Cell)

From: Downing, Donna

Sent: Tuesday, January 24, 2017 12:35 PM

To: Able, Tony <Able.Tony@epa.gov>; Goodin, John <Goodin.John@epa.gov>;
Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Evans, David <Evans.David@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>;
Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel
<Auerbach.Daniel@epa.gov>

Subject: FYI -- Comparison of key bills amending the CWA's definition of "waters of the US"

Hi Tony, John, and Mindy –

During his confirmation hearing, I understand Administrator-Designee Pruitt indicated support for amending the Clean Water Act to define “navigable waters” or “waters of the US.”

Deliberative Process / Ex. 5

Attached please find a draft table summarizing two bills introduced in the last Congress:

- S.980, “Defense of Environment and Private Property Act” introduced by Senator Paul, and
- S. 1140 as amended, “Federal Water Quality Protection Act,” introduced by Senator Barrasso.

Neither bill has been reintroduced in the 115th Congress yet.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know if you have any suggested edits or questions. Thanks!

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Auerbach, Daniel
Sent: Fri 3/3/2017 9:07:59 PM
Subject: Re: For your input-- Comparison of key bills amending the CWA's definition of "waters of the US"

Table comparison S.1140 and S.980 defining waters of US v2 with implications DA.docx

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Friday, March 3, 2017 3:14:35 PM
To: Kwok, Rose; Christensen, Damaris; Auerbach, Daniel
Subject: For your input-- Comparison of key bills amending the CWA's definition of "waters of the US"

Hi Rose, Damaris, and Dan:

Attached is a version of the table comparing two bills addressing waters of the US.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks for whatever thoughts you might have!

Donna

From: Downing, Donna

Sent: Friday, January 27, 2017 2:37 PM

To: Auerbach, Daniel <Auerbach.Daniel@epa.gov>

Cc: Able, Tony <Able.Tony@epa.gov>; Evans, David <Evans.David@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Subject: Re: FYI -- Comparison of key bills amending the CWA's definition of "waters of the US"

Deliberative Process / Ex. 5

I

Deliberative Process / Ex. 5

Donna

On Jan 27, 2017, at 1:53 PM, Auerbach, Daniel <Auerbach.Daniel@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Able, Tony

Sent: Friday, January 27, 2017 12:49 PM

To: Downing, Donna <Downing.Donna@epa.gov>

Cc: Evans, David <Evans.David@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: FYI -- Comparison of key bills amending the CWA's definition of "waters of the US"

Answers/suggestions. I'm copying Mindy

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

404 821 9066 (Cell)

From: Downing, Donna

Sent: Friday, January 27, 2017 11:00 AM

To: Able, Tony <Able.Tony@epa.gov>

Cc: Evans, David <Evans.David@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>

Subject: RE: FYI -- Comparison of key bills amending the CWA's definition of "waters of the US"

Hi Tony:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Donna

PS so you don't have to search in email for the table under discussion, I'm reattaching it here.

From: Able, Tony

Sent: Friday, January 27, 2017 10:18 AM

To: Downing, Donna <Downing.Donna@epa.gov>

Cc: Evans, David <Evans.David@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>;

Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel

<Auerbach.Daniel@epa.gov>

Subject: RE: FYI -- Comparison of key bills amending the CWA's definition of "waters of the US"

Deliberative Process / Ex. 5

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

404 821 9066 (Cell)

From: Downing, Donna

Sent: Tuesday, January 24, 2017 12:35 PM

To: Able, Tony <Able.Tony@epa.gov>; Goodin, John <Goodin.John@epa.gov>;

Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Evans, David <Evans.David@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>

Subject: FYI -- Comparison of key bills amending the CWA's definition of "waters of the US"

Hi Tony, John, and Mindy –

During his confirmation hearing, I understand Administrator-Designee Pruitt indicated support for amending the Clean Water Act to define “navigable waters” or “waters of the US.”

Deliberative Process / Ex. 5

Attached please find a draft table summarizing two bills introduced in the last Congress:

- S.980, “Defense of Environment and Private Property Act” introduced by Senator Paul, and
- S. 1140 as amended, “Federal Water Quality Protection Act,” introduced by Senator Barrasso.

Neither bill has been reintroduced in the 115th Congress yet.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know if you have any suggested edits or questions. Thanks!

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]
From: Christensen, Damaris
Sent: Fri 3/3/2017 3:43:49 PM
Subject: some thoughts for discussion about next steps
[process options WOTUSv2.docx](#)
[WOTUS2 policy and process asks.docx](#)
[people tasks WOTUSredo.docx](#)

Are we meeting sometime today?

To: Wehling, Carrie[Wehling.Carrie@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Goodin, John[Goodin.John@epa.gov]
Cc: Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Loop, Travis[Loop.Travis@epa.gov]
From: Kwok, Rose
Sent: Tue 2/28/2017 11:20:01 PM
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx
[EXECUTIVE ORDER.pdf](#)
[CWR FR notice Prepublication Version.pdf](#)

Deliberative Process / Ex. 5

From: Kwok, Rose
Sent: Tuesday, February 28, 2017 6:06 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Loop, Travis <Loop.Travis@epa.gov>
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

From: Kwok, Rose
Sent: Tuesday, February 28, 2017 5:51 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John

<Goodin.John@epa.gov>

Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

From: Wehling, Carrie

Sent: Tuesday, February 28, 2017 5:00 PM

To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>;
Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>

Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

Carrie

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Kwok, Rose

Sent: Tuesday, February 28, 2017 4:57 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>

Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

From: Downing, Donna

Sent: Tuesday, February 28, 2017 4:55 PM

To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>

Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

Donna

From: Wehling, Carrie
Sent: Tuesday, February 28, 2017 4:40 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Kwok, Rose
Sent: Tuesday, February 28, 2017 2:59 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Campbell, Ann
Sent: Tuesday, February 28, 2017 12:52 PM
To: Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: FW: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

From: Wendelowski, Karyn
Sent: Tuesday, February 28, 2017 12:34 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

Karyn Wendelowski

Attorney Advisor

Office of General Counsel

(202) 564-5493

To: Wehling, Carrie[Wehling.Carrie@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Goodin, John[Goodin.John@epa.gov]
Cc: Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Loop, Travis[Loop.Travis@epa.gov]
From: Kwok, Rose
Sent: Tue 2/28/2017 11:06:31 PM
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx
CWR FR notice Prepublication Version.pdf

Here's the version that I'll be posting on the website momentarily.

From: Kwok, Rose
Sent: Tuesday, February 28, 2017 5:51 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Hi Folks,

Attorney Client/DPP/ Ex. 5

From: Wehling, Carrie
Sent: Tuesday, February 28, 2017 5:00 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>;
Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Attorney Client/DPP/ Ex. 5

Carrie

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Kwok, Rose
Sent: Tuesday, February 28, 2017 4:57 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Wehling, Carrie
<Wehling.Carrie@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John
<Goodin.John@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Attorney Client/DPP/ Ex. 5

From: Downing, Donna
Sent: Tuesday, February 28, 2017 4:55 PM

To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>;
Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Attorney Client/DPP/ Ex. 5

Donna

From: Wehling, Carrie
Sent: Tuesday, February 28, 2017 4:40 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Attorney Client/DPP/ Ex. 5

Caroline (Carrie) Wehling

Assistant General Counsel

Water Law Office

U.S. Environmental Protection Agency

Washington DC 20004

202-564-5492

wehling.carrie@epa.gov

From: Kwok, Rose
Sent: Tuesday, February 28, 2017 2:59 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>; Goodin, John <Goodin.John@epa.gov>;
Downing, Donna <Downing.Donna@epa.gov>
Cc: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie
<Wehling.Carrie@epa.gov>
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx

Hi All –

Attorney Client/DPP/ Ex. 5

From: Campbell, Ann
Sent: Tuesday, February 28, 2017 12:52 PM
To: Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing,
Donna <Downing.Donna@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: FW: CWR FR notice draft 2-28 12.25pm clean.docx

Deliberative Process / Ex. 5

From: Wendelowski, Karyn
Sent: Tuesday, February 28, 2017 12:34 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: CWR FR notice draft 2-28 12.25pm clean.docx

Attorney Client/DPP / Ex. 5

Karyn Wendelowski

Attorney Advisor

Office of General Counsel

(202) 564-5493

To: Campbell, Ann[Campbell.Ann@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]
Cc: Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
From: Kwok, Rose
Sent: Tue 2/28/2017 7:59:12 PM
Subject: RE: CWR FR notice draft 2-28 12.25pm clean.docx
[CWR FR notice draft 2-28 2 PM clean.docx](#)
[CWR FR notice draft 2-28 2 PM redline.docx](#)

Hi All –

I've made some formatting edits per the templates/guidelines. I talked to Sandy about the need

Deliberative Process / Ex. 5	She says that \$	Deliberative Process / Ex. 5
Deliberative Process / Ex. 5		

I've attached a redline and clean version. The thing that I didn't note on my "clean" version is if

Deliberative Process / Ex. 5

From: Campbell, Ann
Sent: Tuesday, February 28, 2017 12:52 PM
To: Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>
Subject: FW: CWR FR notice draft 2-28 12.25pm clean.docx

Folks, here the final language. We need to insert Donna's name as the POC, a new email address and get it FR formatted. I think you all are also working on the action memo from John to Mike and the typeset request. I'm working on the action memo from Mike to the Admin (and will get that to you shortly for you to crib from).

I'm still clarifying timing. What are we missing?

From: Wendelowski, Karyn
Sent: Tuesday, February 28, 2017 12:34 PM

To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie
<Wehling.Carrie@epa.gov>
Subject: CWR FR notice draft 2-28 12.25pm clean.docx

Look at this one please. We also need OW to identify a contact for the notice.

Karyn Wendelowski

Attorney Advisor

Office of General Counsel

(202) 564-5493

E.O. 13132 (Federalism) Consultation

EO 13132 requires meaningful and timely consultation with elected state and local officials or their representative national organizations early in the process of developing the proposed regulation; if federalism is triggered, a federalism summary impact statement is required in the preamble to the final rule; and copies of all written communications submitted by state and local officials to the Agency must be submitted to OMB.¹

The Big 10 associations that are typically a part of federalism consultations include: the National Governors Association, the National Conference of State Legislatures, the Council of State Governments, the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the County Executives of America, the National Associations of Towns and Townships, the International City/County Management Association, and the Environmental Council of States. In addition to the Big 10 associations, OW typically invites the National Association of Clean Water Agencies (NACWA) and the Association of Clean Water Administrators (ACWA) to participate.

Typical timeline

1. Send invitation letter with 2 week notice before meeting (here or at Hall of States)
2. Meeting with Big 10 (additional meetings may be scheduled)
3. 60 days for written comments and feedback is now SOP; this precedes submission to OMB

Detailed requirements to satisfy federalism (if triggered):

1. “Meaningful and timely” consultation
 - a. Generally interpreted to mean that “consultation should begin as early as possible and continue as you develop the proposed rule to ensure S/L elected officials or their representative national organizations are given an opportunity to consider and comment on your proposed approach” (p.8)
2. “Federalism Summary Impact Statement” (“strongly recommended” with draft rule, required with final rule):
 - a. A description of the extent of the agency’s prior consultation with state/local officials or their representative national organizations
 - b. A summary of the nature of their concerns and the Agency’s position supporting the need to issue the regulation
 - c. A statement of the extent to which the concerns raised during consultation have been met
3. Submission of final rule to OMB must include:
 - a. Federalism Certification Form (generated by OP, signed by their AA)
 - b. Formal policy-related correspondence
 - c. Upon OMB request, other written communications

EPA’s Tribal Consultation Policy:

¹ Based on EPA’s Nov. 2008 Guidance on Executive Order 13132: Federalism

- The policy provides a broad standard for determining when consultation is appropriate (for EPA actions and decisions that “may affect tribal interest”)
- The policy is broader in scope than the EO 13175, which directs agencies to consult when policies have substantial direct effects on tribes.
- Typical timeline: EPA’s tribal consultation policy does not specify a specific amount of time that is required for tribal consultation, only that:
 - *“Consultation should occur early enough to allow tribes the opportunity to provide meaningful input that can be considered prior to EPA deciding whether, how, or when to act on the matter under consideration. As proposals and options are developed, consultation and coordination should be continued, to ensure that the overall range of options and decisions is shared and deliberated by all concerned parties, including additions or amendments that occur later in the process.”*
 - In practice, we try to provide tribes a minimum of 60 days to consult/provide comments on an action.

Process options

Federalism (*under EPA guidance, consultation is required*)

1. Formal federalism, with shortened timeframe for response
 - About 3-4 weeks
 - Will get some pushback but meet legal and policy requirements
2. Formal federalism, with shortened timeframe for response and in invitation letter set meetings to occur through the public comment period
 - More significant involvement of states, but keeps compressed timeline
 - More staff intensive
3. Formal federalism with typical timeframes
 - Takes at least 75 days
 - Sets up situation with most buy-in from states

Tribal Consultation

1. Formal tribal consultation, with shortened timeframe for response
 - About 4 weeks
 - Will get some pushback but meet legal and policy requirements
2. Formal tribal consultation, with shortened timeframe for response and in invitation letter set meetings to occur through the public comment period
 - More significant involvement of tribes, but keeps compressed timeline
 - More staff intensive
3. Formal tribal consultation with typical timeframes
 - Takes at least 75 days, more if expressed tribal interest in in-person meetings is followed
 - Sets up situation with most buy-in from tribes

SBREFA/ Small Entity Outreach

1. Certify no SISNOSE and do no outreach
 - Fastest (simply relies on econ), fewest requirements
 - Most pushback.
2. Certify no SISNOSE and hold one meeting before OMB review (possibly others after) using invitation list from 2011 and 2014 meetings
 - About **4-6 weeks** for invite, meeting, summary, no or brief time for written comments
 - Will get some pushback but meet legal and policy requirements
3. Certify no SISNOSE, and hold one meeting before OMB review (possibly others after) using new invitation list developed with SBA and OMB, write up formal summary of meeting
 - About 8-12 weeks for developing invite list, invite, meeting, summary, no time or brief time for written comments. Could be even longer if OMB and SBA delay at any stage.
 - More significant involvement of OMB and SBA, but longer timeline
 - More staff intensive
4. Formal SBREFA panel with typical timeframes and consensus report
 - Takes an average of 8 months
 - Sets up situation with most buy-in from SBA and small entities

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Able, Tony[Able.Tony@epa.gov]
From: Nandi, Romell
Sent: Wed 2/8/2017 5:17:47 PM
Subject: RE: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday
Powerpoint -- Transition briefing Clean Water Rule v2.pptx

Deliberative Process / Ex. 5

Romell

(202) 503-8645

From: Downing, Donna
Sent: Tuesday, February 07, 2017 5:13 PM
To: Nandi, Romell <Nandi.Romell@epa.gov>
Cc: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday

Hi Romell (with a cc to the usuals):

Attached please find the draft powerpoint on waters of the United States and the Clean Water Rule, for use at the briefing this Thursday. Could you please forward it to OW? The attached reflects input from **Deliberative Process / Ex. 5** (thanks, folks!)

If reviewers have any comments or suggestions, please let me know asap. Thanks!

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Wendelowski, Karyn
Sent: Wed 2/8/2017 2:14:03 PM
Subject: Re: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday
Powerpoint -- Transition briefing Clean Water Rule v2kw.pptx

My edits attached (sorry, I cannot for the life of me figure out how to do track changes in powerpoint - I'll list out the slides I had edits on).

Deliberative Process / Ex. 5

From: Eisenberg, Mindy
Sent: Tuesday, February 7, 2017 5:41 PM
To: Wendelowski, Karyn; Wehling, Carrie
Cc: Downing, Donna
Subject: FW: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday

Sorry for doing this to you, but could you please take a look at this powerpoint and send comments back to Donna early Wednesday?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks much!

Mindy Eisenberg

Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Downing, Donna
Sent: Tuesday, February 07, 2017 5:13 PM
To: Nandi, Romell <Nandi.Romell@epa.gov>
Cc: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday

Hi Romell (with a cc to the usuals):

Attached please find the draft powerpoint on waters of the United States and the Clean Water Rule, for use at the briefing this Thursday. Could you please forward it to OW? The attached reflects input from **Deliberative Process / Ex. 5** (thanks, folks!)

If reviewers have any comments or suggestions, please let me know asap. Thanks!

Donna

Donna Downing
Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Wendelowski, Karyn
Sent: Wed 2/8/2017 1:25:24 PM
Subject: Re: Can you review factsheet for confirmation hearing?
Confirmation Hearing Factsheet CWR- 02-07-17kw.docx

A couple of edits

From: Christensen, Damaris
Sent: Tuesday, February 7, 2017 8:29 PM
To: Wendelowski, Karyn; Wehling, Carrie
Cc: Eisenberg, Mindy; Able, Tony; Downing, Donna; Kwok, Rose
Subject: RE: Can you review factsheet for confirmation hearing?

Here's the revised version. Thanks all.

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 6:07 PM
To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Can you review factsheet for confirmation hearing?

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 5:40 PM
To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: Can you review factsheet for confirmation hearing?

We are supposed to send to OW by 10 am tomorrow, sorry for the short turnaround time, I just got final comments.

Damaris

To: Wendelowski, Karyn[wendelowski.karyn@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]
From: Christensen, Damaris
Sent: Wed 2/8/2017 1:29:58 AM
Subject: RE: Can you review factsheet for confirmation hearing?
Confirmation Hearing Factsheet CWR- 02-07-17.docx

Here's the revised version. Thanks all.

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 6:07 PM
To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: Can you review factsheet for confirmation hearing?

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 5:40 PM
To: Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: Can you review factsheet for confirmation hearing?

We are supposed to send to OW by 10 am tomorrow, sorry for the short turnaround time, I just got final comments.

Damaris

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Able, Tony
Sent: Tue 2/7/2017 10:45:27 PM
Subject: RE: Confirmation Hearing Factsheet CWR- 02-06-17 ed.docx
Confirmation Hearing Factsheet CWR- 02-06-17 ed (002).docx

Damaris: See my comments attached. I understand that Donna will be looking at the background section per your request.

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

Personal Phone / Ex. 6

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 3:56 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Able, Tony <Able.Tony@epa.gov>
Subject: Confirmation Hearing Factsheet CWR- 02-06-17 ed.docx

Tony and Mindy – are you likely to be able to review before tomorrow morning?

Donna – can you check out this version, which reflects Dan’s additional suggestions of today?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

D

To: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 2/7/2017 10:25:33 PM
Subject: RE: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, February 07, 2017 5:13 PM
To: Nandi, Romell <Nandi.Romell@epa.gov>
Cc: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday

Hi Romell (with a cc to the usuals):

Attached please find the draft powerpoint on waters of the United States and the Clean Water Rule, for use at the briefing this Thursday. Could you please forward it to OW? The attached reflects input from John, Mindy, Damaris, and Rose (thanks, folks!)

If reviewers have any comments or suggestions, please let me know asap. Thanks!

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Able, Tony[Able.Tony@epa.gov]
From: Kwok, Rose
Sent: Tue 2/7/2017 10:01:33 PM
Subject: RE: Confirmation Hearing Factsheet CWR- 02-06-17 ed.docx

I think that this bullet needs to be edited:

Deliberative Process / Ex. 5

From: Eisenberg, Mindy
Sent: Tuesday, February 07, 2017 4:41 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Able, Tony <Able.Tony@epa.gov>
Subject: RE: Confirmation Hearing Factsheet CWR- 02-06-17 ed.docx

Hi Damaris,

Here are my edits.

Thanks!

Mindy

Mindy Eisenberg

Acting Director, Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

(202) 566-1290

eisenberg.mindy@epa.gov

From: Christensen, Damaris

Sent: Tuesday, February 07, 2017 3:56 PM

To: Downing, Donna <Downing.Donna@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>;
Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Eisenberg, Mindy
<Eisenberg.Mindy@epa.gov>; Able, Tony <Able.Tony@epa.gov>

Subject: Confirmation Hearing Factsheet CWR- 02-06-17 ed.docx

Tony and Mindy – are you likely to be able to review before tomorrow morning?

Donna – can you check out this version, which reflects Dan's additional suggestions of today?

Deliberative Process / Ex. 5

D

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 2/7/2017 9:16:26 PM
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Lol, ok ☺

From: Kwok, Rose
Sent: Tuesday, February 07, 2017 4:15 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

I retitled the slides of your retitled slides on the version on the G drive at

Nonresponsive Internal URL/ Ex. 6

Nonresponsive Internal URL/ Ex. 6

My emails are still trying to send...

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 4:09 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Note that I retitled a bunch of slides...

From: Kwok, Rose
Sent: Tuesday, February 07, 2017 4:08 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Here was one of the emails that didn't make it through. I've addressed this (I think) in my edits on the G drive.

Deliberative Process / Ex. 5

From: Downing, Donna

Sent: Tuesday, February 07, 2017 1:09 PM

To: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Hi Tony, Mindy, John, Damaris, and Rose:

Attached is a draft powerpoint presentation on "waters of the US," for use at Thursday's transition team briefing.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I understand Mike S. and others in OW would like the draft powerpoint for their review asap. So, if you have comments/edits/improvements/recommendations, they'll be particularly helpful if received by 4pm today (sorry for the turnaround!)

Thanks in advance for your help.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Kwok, Rose
Sent: Tue 2/7/2017 9:15:22 PM
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

I retitled the slides of your retitled slides on the version on the G drive at

Nonresponsive Internal URL/ Ex. 6

Nonresponsive Internal URL/ Ex. 6

My emails are still trying to send...

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 4:09 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Note that I retitled a bunch of slides...

From: Kwok, Rose
Sent: Tuesday, February 07, 2017 4:08 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Here was one of the emails that didn't make it through. I've addressed this (I think) in my edits on the G drive.

Deliberative Process / Ex. 5

From: Downing, Donna

Sent: Tuesday, February 07, 2017 1:09 PM

To: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Hi Tony, Mindy, John, Damaris, and Rose:

Attached is a draft powerpoint presentation on “waters of the US,” for use at Thursday’s transition team briefing.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

So, if you have comments/edits/improvements/recommendations, they'll be particularly helpful if received by 4pm today (sorry for the turnaround!)

Thanks in advance for your help.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Christensen, Damaris[Christensen.Damaris@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Kwok, Rose
Sent: Tue 2/7/2017 9:15:17 PM
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing
POWERPOINT Transition briefing Clean Water Rule v1 DC RMK.pptx

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 2:16 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Deliberative Process / Ex. 5

Damaris

From: Downing, Donna
Sent: Tuesday, February 07, 2017 1:09 PM
To: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Hi Tony, Mindy, John, Damaris, and Rose:

Attached is a draft powerpoint presentation on “waters of the US,” for use at Thursday’s transition team briefing.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks in advance for your help.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Kwok, Rose[Kwok.Rose@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]
From: Christensen, Damaris
Sent: Tue 2/7/2017 9:09:11 PM
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Note that I retitled a bunch of slides...

From: Kwok, Rose
Sent: Tuesday, February 07, 2017 4:08 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Here was one of the emails that didn't make it through. I've addressed this (I think) in my edits on the G drive.

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, February 07, 2017 1:09 PM
To: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Hi Tony, Mindy, John, Damaris, and Rose:

Attached is a draft powerpoint presentation on "waters of the US," for use at Thursday's transition team briefing.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I understand Mike S. and others in OW would like the draft powerpoint for their review asap. So, if you have comments/edits/improvements/recommendations, they'll be particularly helpful if received by 4pm today (sorry for the turnaround!)

Thanks in advance for your help.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Kwok, Rose
Sent: Tue 2/7/2017 9:07:59 PM
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Here was one of the emails that didn't make it through. I've addressed this (I think) in my edits on the G drive.

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, February 07, 2017 1:09 PM
To: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Hi Tony, Mindy, John, Damaris, and Rose:

Attached is a draft powerpoint presentation on "waters of the US," for use at Thursday's transition team briefing.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I understand Mike S. and others in OW would like the draft powerpoint for their review asap. So, if you have comments/edits/improvements/recommendations, they'll be particularly helpful if received by 4pm today (sorry for the turnaround!)

Thanks in advance for your help.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Able, Tony[Able.Tony@epa.gov]
From: Christensen, Damaris
Sent: Tue 2/7/2017 8:55:57 PM
Subject: Confirmation Hearing Factsheet CWR- 02-06-17 ed.docx
Confirmation Hearing Factsheet CWR- 02-06-17 ed.docx

Tony and Mindy – are you likely to be able to review before tomorrow morning?

Deliberative Process / Ex. 5

D

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Able, Tony[Able.Tony@epa.gov]
From: Kwok, Rose
Sent: Tue 2/7/2017 8:54:41 PM
Subject: Re: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Deliberative Process / Ex. 5

Sent from my iPhone

On Feb 7, 2017, at 3:52 PM, Christensen, Damaris <Christensen.Damaris@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, February 07, 2017 3:43 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Thanks, Damaris, for your input and formatting. I just got some additional suggestions from Mindy and John. I'll will make the latest suggested revisions to the version you've sent.

Deliberative Process / Ex. 5

Stay tuned for the next edition!

Donna

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 2:16 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Deliberative Process / Ex. 5

Damaris

From: Downing, Donna
Sent: Tuesday, February 07, 2017 1:09 PM
To: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>
Subject: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Hi Tony, Mindy, John, Damaris, and Rose:

Attached is a draft powerpoint presentation on “waters of the US,” for use at Thursday’s transition team briefing.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I understand Mike S. and others in OW would like the draft powerpoint for their review asap. So, if you have comments/edits/improvements/recommendations, they'll be particularly helpful if received by 4pm today (sorry for the turnaround!)

Thanks in advance for your help.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Able, Tony[Able.Tony@epa.gov]
From: Christensen, Damaris
Sent: Tue 2/7/2017 8:52:01 PM
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Deliberative Process / Ex. 5

From: Downing, Donna
Sent: Tuesday, February 07, 2017 3:43 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Thanks, Damaris, for your input and formatting. I just got some additional suggestions from Mindy and John. I'll will make the latest suggested revisions to the version you've sent.

Deliberative Process / Ex. 5

Stay tuned for the next edition!

Donna

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 2:16 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>

Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Deliberative Process / Ex. 5

Damaris

From: Downing, Donna

Sent: Tuesday, February 07, 2017 1:09 PM

To: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Hi Tony, Mindy, John, Damaris, and Rose:

Attached is a draft powerpoint presentation on “waters of the US,” for use at Thursday’s transition team briefing.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I understand Mike S. and others in OW would like the draft powerpoint for their review asap. So, if you have comments/edits/improvements/recommendations, they'll be particularly helpful if received by 4pm today (sorry for the turnaround!)

Thanks in advance for your help.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Downing, Donna[Downing.Donna@epa.gov]
Cc: Christensen, Damaris[Christensen.Damaris@epa.gov]; Able, Tony[Able.Tony@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]
From: Kwok, Rose
Sent: Tue 2/7/2017 8:51:42 PM
Subject: Re: For quick review: draft powerpoint for Thursday's Waters of the US briefing

I've got some edits that are churning in my sent box (1 of 3 messages haven't yet sent. My internet has been sloooooow). I've told a Donna where I've saved the edits on the G drive, in the Briefing Materials on WUS folder

Sent from my iPhone

On Feb 7, 2017, at 3:43 PM, Downing, Donna <Downing.Donna@epa.gov> wrote:

Thanks, Damaris, for your input and formatting. I just got some additional suggestions from Mindy and John. I'll will make the latest suggested revisions to the version you've sent.

Deliberative Process / Ex. 5

Stay tuned for the next edition!

Donna

From: Christensen, Damaris
Sent: Tuesday, February 07, 2017 2:16 PM
To: Downing, Donna <Downing.Donna@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Deliberative Process / Ex. 5

Damaris

From: Downing, Donna

Sent: Tuesday, February 07, 2017 1:09 PM

To: Able, Tony <Able.Tony@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>;
Goodin, John <Goodin.John@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>;
Christensen, Damaris <Christensen.Damaris@epa.gov>

Subject: For quick review: draft powerpoint for Thursday's Waters of the US briefing

Hi Tony, Mindy, John, Damaris, and Rose:

Attached is a draft powerpoint presentation on “waters of the US,” for use at Thursday’s transition team briefing.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I understand Mike S. and others in OW would like the draft powerpoint for their review asap. So, if you have comments/edits/improvements/recommendations, they'll be particularly helpful if received by 4pm today (sorry for the turnaround!)

Thanks in advance for your help.

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

ph: (202) 566-1367

downing.donna@epa.gov

USPS Address:

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Delivery Address:

1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

To: Able, Tony[Able.Tony@epa.gov]; Auerbach, Daniel[Auerbach.Daniel@epa.gov]; Bennett, Brittany[bennett.brittany@epa.gov]; Bowers, Kathleen[bowers.kathleen@epa.gov]; Downing, Donna[Downing.Donna@epa.gov]; Harrington, Rachel[harrington.rachel@epa.gov]; Hough, Palmer[Hough.Palmer@epa.gov]; Hunter, Christopher[Hunter.Christopher@epa.gov]; Irby, Virginia[Irby.Virginia@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Landers, Timothy[Landers.Timothy@epa.gov]; Linn, Jennifer[Linn.Jennifer@epa.gov]; Moulta-Ali, Abu[Moulta-Ali.Abu@epa.gov]; Topping, Brian[Topping.Brian@epa.gov]
From: Christensen, Damaris
Sent: Tue 2/7/2017 5:59:06 PM
Subject: RE: REMINDER: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am TOMORROW
[Confirmation Hearing Factsheet CWR- 02-06-17 ed.docx](#)

In case anyone has comments on this – it already reflects comments from Rose and Donna, who of course should feel free to comment again.

Damaris

From: Able, Tony
Sent: Tuesday, February 07, 2017 12:42 PM
To: Auerbach, Daniel <Auerbach.Daniel@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Bowers, Kathleen <bowers.kathleen@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>; FertikEdgerton, Rachel <FertikEdgerton.Rachel@epa.gov>; Harrington, Rachel <harrington.rachel@epa.gov>; Hough, Palmer <Hough.Palmer@epa.gov>; Hunter, Christopher <Hunter.Christopher@epa.gov>; Irby, Virginia <Irby.Virginia@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Landers, Timothy <Landers.Timothy@epa.gov>; Linn, Jennifer <Linn.Jennifer@epa.gov>; Moulta-Ali, Abu <Moulta-Ali.Abu@epa.gov>; Topping, Brian <Topping.Brian@epa.gov>
Subject: FW: REMINDER: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am TOMORROW
Importance: High

FYI

Tony Able, Acting Chief

Wetlands and Aquatic Resources Regulatory Branch

Wetlands Division

Office of Wetlands, Oceans and Watersheds

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW, mailcode 4502T

Washington, DC 20460

202 566 0375 (Phone)

Personal Phone / Ex. 6

From: Nandi, Romell

Sent: Tuesday, February 07, 2017 12:03 PM

To: OWOW Managers Group <OWOW_Managers_Group@epa.gov>

Subject: REMINDER: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am TOMORROW

Importance: High

Just a reminder that these are due tomorrow at 10am. Thanks.

(Gale – I got yours).

Romell

From: Nandi, Romell

Sent: Friday, February 03, 2017 12:16 PM

To: OWOW Managers Group <OWOW_Managers_Group@epa.gov>


Subject: OWOW topics identified for OW AA nominee briefing book - FACTS SHEETS NEEDED by 10am on Wed, Feb. 8

Importance: High

OWOW Managers:

The OWOW topics below, from the original potential topic list we submitted to OW, **have been identified as needing fact sheets** for the OW AA nominee's briefing book:

Deliberative Process / Ex. 5

Attached is a Word template for how the fact sheet should look (using  as an example) – please look at it closely.

A few general comments:

- These factsheets should be written at a fairly high level. Exhaustive detail is not necessary, just the main message in plain language.
- OW is looking for short, direct bullets. Bullets should be only one sentence in length (except in the background section) and each section should have no more than three bullets (again except for the background section). In a hearing setting, our nominee will need to have the main message in a clear and easily accessible format. Short, direct bullets achieve that.
- Factsheets should be no more than one page in length.

I will be sending the draft fact sheets to John as soon as I get them for his review. Although I am asking for these **no later than 10am on Wednesday the 8th**, obviously if you have them sooner, send them as soon as they are ready since it will allow John more time to review and for us to edit as needed.

Thanks.

Romell

566-1203

To: Downing, Donna[Downing.Donna@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Able, Tony[Able.Tony@epa.gov]
From: Christensen, Damaris
Sent: Mon 2/6/2017 2:21:43 PM
Subject: Confirmation Hearing Factsheet CWR- 02-06-17.docx
Confirmation Hearing Factsheet CWR- 02-06-17.docx

Here's a drafty draft for review. I tried to keep in mind the purpose – looks like a confirmation hearing – and so the TPs might be different than usual.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Donna Downing
Sent: Mon 2/6/2017 12:17:04 AM
Subject: Emailing: Outline -- CWR presentation to transition team v1
[Outline -- CWR presentation to transition team v1.docx](#)

Your message is ready to be sent with the following file or link attachments:

Outline -- CWR presentation to transition team v1

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

To: Downing, Donna[Downing.Donna@epa.gov]
From: Evans, David
Sent: Wed 2/1/2017 5:42:56 PM
Subject: FW: OW-relevant Pruitt QFR responses
[2017-01-31 Pruitt OW QFRs.docx](#)
[Pruitt QFRs.pdf](#)

Sent from my Windows Phone

From: [Nandi, Romell](#)
Sent: 1/31/2017 5:33 PM
To: [OWOW Managers Group](#)
Subject: FYI: OW-relevant Pruitt QFR responses

FYI -

From: Klasen, Matthew
Sent: Tuesday, January 31, 2017 5:12 PM
To: Peck, Gregory <Peck.Gregory@epa.gov>; Orvin, Chris <Orvin.Chris@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Conerly, Octavia <Conerly.Octavia@epa.gov>; Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Fontaine, Tim <Fontaine.Tim@epa.gov>; Threet, Derek <Threet.Derek@epa.gov>
Cc: Borum, Denis <Borum.Denis@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Kuhn, Kevin <Kuhn.Kevin@epa.gov>
Subject: OW-relevant Pruitt QFR responses

Hi everyone,

As you likely know, Administrator-nominee Pruitt responded to a long list of Questions for the Record from Senate EPW Committee members late last week, following up from his confirmation hearing a couple weeks ago. This was reported in Inside EPA and a few other outlets.

Deliberative Process / Ex. 5 our
water team thought that pulling out the OW-relevant questions and responses might be

generally helpful, if only to avoid interested folks needing to wade through a 245-page document. Toward that end, see attached for a shorter-but-still-not-short 42-page document. This focuses on the most OW-relevant responses, and does not include responses with only passing references to water, or that don't directly focus on OW's work. (See caveat at the top of p. 1.)

I've also attached the original PDF of all Qs&As in case that's of interest to folks with a surplus of available patience and time.

Senate EPW is scheduled to vote on Administrator-nominee Pruitt tomorrow at a business meeting at 10:45 am, with reports this afternoon suggesting that Democrats may choose to not show up and/or walk out. We'll see. Live stream of the meeting is likely to be available

here: <http://www.epw.senate.gov/public/index.cfm/hearings?ID=87E06C7E-6037-4CE3-A594-D0823491D2E4>

Let Sven, Denis, Kevin, or me know if you have any questions.

Thanks,

Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443P
202 566 0780

Personal Phone / Ex. 6

OW-Relevant QFRs from EPA Administrator Nominee Scott Pruitt

The following includes questions and responses, verbatim, as submitted to the Senate Committee on Environment and Public Works, January 18, 2017. This document excludes cross-cutting topics relevant to but not led by OW, such as climate issues overall or environmental justice; responses that merely reference clean air or clean water; and duplicate responses (where apparent).

SENATOR BOOKER

4. In 2016, troubling reports of lead contamination in school drinking water in New Jersey and other areas of the country made clear the urgent need to test school drinking water and remediate school drinking water infrastructure that is contaminating the water our children drink. *a.* What is your plan to prioritize and expedite the EPA's efforts to eliminate lead contamination in school drinking water?

If confirmed, I will fully carry out EPA's authorities, including its authorities under the Safe Drinking Water Act. I note that in the WIIN Act, Congress amended the Safe Drinking Water Act to authorize funding for voluntary school lead testing. If confirmed and if funding is provided, I will carry out that program.

5.If you are confirmed, how would EPA respond when a state permits pollution to be discharged into a smaller waterway that leads to contamination of drinking water supplies in a downstream state?

If confirmed, I would follow the processes set forth in the Clean Water Act and its implementing regulations.

11. Children living in communities of color and low-income communities have the highest blood lead levels of all children in the United States, and even some developing countries. As Administrator, what steps would you take to address this?

I am concerned about high-blood levels in children and children's health generally. As I testified, the Administrator has a significant role regarding environmental issues. If confirmed, I would expect to be briefed to learn about EPA's legal authorities and ongoing programs and outstanding recommendations from the Inspector General, if any, concerning this issue before taking action.

17.Monitoring of our coastal waters is critical to ensure the health and safety of its swimmers and bathers. Many coastal communities, especially low-income and minority communities have limited free recreational opportunities other than spending the day at the beach. As EPA administrator will you commit to continuing EPA's BEACHES program, which provides funding for state water quality monitoring programs that ensure healthy and safe recreation?

I am not personally familiar with the BEACHES program, but I would expect, if confirmed, to be briefed by staff about the program. If confirmed, I would work to faithfully execute the laws EPA is responsible for administering, including those authorizing the BEACHES program, in order to protect human health and the environment for all Americans. If confirmed, I would expect EPA to operate in an open and transparent manner, consider the views of stakeholders as appropriate, act based on sound science, and follow the laws as established by Congress.

18. A 2014 study by scientists at Lawrence National Laboratory at Berkeley reported that an estimated 10 % of chemicals used in fracking fluid are known to be toxic to humans and aquatic life. Fracking practices commonly are conducted in fringe low-income and working class communities. Since these

toxics are known to leach into waterways how will you ensure this is prevented?

As was affirmed by Congress in drafting the Lautenberg Act, hazard is only one characteristic of risk and simply stating a chemical substance has toxicity does not mean there is exposure. EPA is tasked with carrying out laws as directed by Congress and if I am confirmed, I will use the authorities vested in me to protect drinking water under the Safe Drinking Water Act.

21. In 2003, Arkansas and Oklahoma signed an agreement, the Statement on Joint Principles to take several measures to reduce phosphorus pollution in the Illinois River Watershed. One requirement was for Oklahoma to revise its 0.037 mg/L phosphorus criterion by 2012, which it did. Why, instead of supporting the conclusion of your own state Water Resources Board, did you delay implementation an additional three years by negotiating another agreement to conduct yet another study?

The "Statement of Joint Principles and Actions" did not require Oklahoma to "revise" its criterion, but rather stated that "Oklahoma will reevaluate Oklahoma's .037 mg/l criterion for total phosphorus in Oklahoma's Scenic Rivers by 2012, based on the best scientific information available at that time, and with the full, timely inclusion of officials from the State of Arkansas representing both point and non point source dischargers." As of 2012, which was the final date for the reevaluation to occur, Arkansas maintained its objection that Oklahoma's .037 mg/l criterion was inappropriate, and not based on the best scientific information available at that time. Rather than protract a now decades long dispute that appeared to again be headed towards litigation once again, I instead negotiated an agreement whereby Arkansas agreed to be finally bound to the results of a new study that would use the best scientific information available at the time to determine the appropriate criterion. This agreement avoided the prospect of more litigation, and ultimately resolved the dispute (with Oklahoma getting the stringent standard that it wanted).

22. In your testimony before the Senate Environment and Public Works Committee, you said that the 2003 agreement expired during your term? Where exactly in the agreement do you see any expiration to the agreement?

The "Statement of Joint Principles and Actions" stated that "Oklahoma will reevaluate Oklahoma's .037 mg/l criterion for total phosphorus in Oklahoma's Scenic Rivers by 2012, based on the best scientific information available at that time, and with the full, timely inclusion of officials from the State of Arkansas representing both point and non point source dischargers." As of 2012, which was the final date for the reevaluation to occur, Arkansas maintained its objection that the .037 mg/l criterion was inappropriate, and not based on the best scientific information available at that time. Therefore, the 2013 Agreement was reached with Arkansas whereby it agreed to be bound by the results of a new study that would use the best scientific information available at the time to determine the appropriate criterion.

23. The 2003 agreement says that, "The state of AR and OK, acting through their environmental agencies, will reissue the above-specified cities' NPDES permits on a normal five (5) year resistance cycle, with the understanding that NPDES permits for these point source dischargers to the shared Oklahoma Scenic Rivers Watershed issued in the year 2012 or beyond must include phosphorus limits stringent enough to meet applicable water quality standards."

a. Do you agree that the 2003 agreement places obligations on NPDES permitted facilities in Arkansas beyond 2012?

b. Because Oklahoma reevaluated its criterion in 2012, does this section require that NPDES permits issued in Arkansas have to be stringent enough to meet Oklahoma's .037 mg/L phosphorus water quality standard by 2012 and then beyond 2012?

c. In your testimony before the Environment and Public Works committee, you testified that the agreement was "historic" and OK's phosphorus limit would be implemented for the first time in history on both sides of the river. Do you agree that the .037 mg/L phosphorus criterion was enforceable on both sides of the border under the terms of the 2003 agreement?

Yes. No. No.

24. In the 2013 agreement between Arkansas and Oklahoma, you agreed "not to institute or maintain administrative enforcement actions, judicial proceedings or take regulatory actions contrary to this second statement."

a. Why did you agree to suspend your enforcement authority?

b. How many enforcement actions did you suspend?

c. Do you interpret "judicial proceedings" to include any judgment in the pending case your predecessor brought against 14 poultry polluters? Was this agreement intended to suspend enforcement of any judicial resolution of that case?

I did not agree to suspend enforcement authority. The Agreement simply acknowledged that neither state would take actions that would violate the terms of the agreement. I do not know if any enforcement proceedings were suspended, as my office is not the entity that would be involved in such actions. I do not interpret "judicial proceedings" in that manner, and the agreement was not so intended.

25. In 2013, you negotiated an agreement with Arkansas that allowed those municipal dischargers to continue discharging at 1 mg/l phosphorus, agreed to remove the 2012 deadline for complying with Oklahoma's phosphorus standard, and agreed to reopen Oklahoma's phosphorus water quality standard. Since Arkansas had already agreed, in 2003, to ensure that its large municipal dischargers would fully comply with Oklahoma's phosphorus standard starting in 2012, why did you let them out of that agreement in 2013? Please identify any provision of your 2013 agreement that requires these dischargers to meet Oklahoma's phosphorus standards after February 20, 2016.

a. Since the U.S. EPA approved Oklahoma's Phosphorus Standard in 2003, what legal basis do you think Arkansas had to file a lawsuit challenging since the time for filing a legal challenge had expired? If you do not believe the time for filing a legal challenge had expired, please explain the basis for your belief.

b. Do you agree that Arkansas is required to ensure that its point source discharge permits comply with all Oklahoma water quality standards that have been approved by the U.S. EPA under the case of Arkansas v. Oklahoma, including the phosphorus standard approved in 2003? Please state the basis for your belief.

c. The Joint Study Committee authorized by your 2013 agreement recommended a standard different from Oklahoma's existing phosphorus water quality standard. Please explain whether this recommended standard will supplant Oklahoma's current water quality standard, and why you have state that the study confirmed Oklahoma's existing 30-day geometric mean 0.037 mg/l phosphorus standard. What is your understanding of the impact of excluding samples taken during conditions

where surface runoff is the dominant influence of total flow and stream ecosystem processes?

The 2013 Agreement did not "let anyone out" of the 2003 Agreement. Arkansas believed that it had legal recourse to resist a criterion to which it objected. Without that additional context as to the claims to which you refer, I am unable to answer your question relating to time bar of Arkansas' hypothetical claims. With regard to Arkansas's obligations, pursuant to the 2013 Agreement, Arkansas is now obligated to adopt and implement a stringent phosphorus standard. The study "used a weight of evidence approach to recommend a six-month average total phosphorus level of not to exceed 0.035 milligrams per liter based on water samples collected during critical conditions was necessary[.]" As I've stated, this confirmed that Oklahoma's 0.037mg/l standard was--despite Arkansas's arguments that it was unnecessarily stringent--necessary to protect the watershed. I am not familiar with the "the impact of excluding samples taken during conditions where surface runoff is the dominant influence of total flow and stream ecosystem processes," to which you refer, and thus cannot offer an opinion on that statement.

26. You stated in your EPW Questionnaire that you negotiated an agreement with Arkansas to reduce phosphorus pollution in the Illinois River watershed that was occurring as a result of poultry growers. Please explain how the agreement reduces pollution from poultry growers.

Runoff from poultry farms contribute to increased phosphorous levels in the Illinois River. The agreement imposed on Arkansas the requirement that it adopt a stringent phosphorous standard, which will necessarily require Arkansas to stringently regulate sources of phosphorous, such as poultry farms, in order to meet that standard.

27. You stated that Oklahoma's phosphorus standard was not being enforced on the Arkansas side of the border prior to your 2013 Agreement. Are you aware that, in April of 2009, the EPA required the Arkansas Department of Environmental Quality to ensure that the discharge permit for the Northwest Arkansas Conservation Authority include an enforceable final effluent limitation for phosphorus stringent enough to meet Oklahoma's phosphorus water standard by June 30, 2012, and that the final NPDES permit for Northwest Arkansas Conservation Authority issued by Arkansas included that requirement? Given the fact that Oklahoma's phosphorus standard was being enforced in Arkansas prior to your 2013 agreement, please explain the benefit to Oklahoma from entering into the agreement.

However, upon reviewing it, I note that Arkansas reserved the right to revise the 0.1 mg/l phosphorus permit limit ("The Department reserves the right to revise the permit limit of 0.1 mg/l for Total Phosphorus upon submission of data which indicates that a Total Phosphorus limit other than 0.1 mg/l is appropriate"). Further, I am aware that Arkansas continued to dispute the validity of Oklahoma's 0.037 mg/l limit, a dispute that is now resolved with Arkansas agreeing that 0.037 mg/l phosphorus standard is appropriate. That agreement greatly benefits Oklahoma.

28. It appears that the last call or meeting that EPA has on the long delayed TMDL for the Illinois River and Lake Tenkiller watersheds occurred on November 14, 2013. Please explain how your 2013 Agreement is related to the TMDL or cleanup of Lake Tenkiller. What steps have you taken with the U.S. EPA to encourage completion of the Illinois River and Lake Tenkiller TMDLs and oppose further delay?

I would certainly encourage the EPA to fulfill any obligations it might have to complete those TMDLs, but I have not taken any legal actions to force the EPA to do so.

29. What steps have you taken to implement and enforce the 0.037 mg/L criterion for phosphorus pollution just approved by the Scenic Rivers Joint Commission in Oklahoma? What measures has Arkansas agreed to in light of the study results?

I have not personally taken any steps to implement or enforce that water quality standard, because the authority to do so is vested in Oklahoma's environmental regulators, such as the Oklahoma Department of Environmental Quality, and Oklahoma Water Resources Board.

30. In 1992 the US Supreme Court in *Arkansas v. Oklahoma*, 503 U.S. 91 (1992), resolved a lawsuit between Oklahoma and Arkansas related to water pollution in the Illinois River and held that upriver states must comply with water quality standards that are adopted by downriver states and approved by EPA. After that Supreme Court decision, effective July 1, 2002, Oklahoma adopted a nutrient criterion for total phosphorous of .037 mg/l for all Oklahoma water bodies designated as Scenic Rivers, codified at Oklahoma Administrative Code 785:45-5-19(c)(2). This new water quality standard had a ten year phase in period before full compliance was required on June 30, 2012. EPA approved Oklahoma's .037 mg/l phosphorous standard, as codified at Oklahoma Administrative Code 785:45-5-19(c)(2), on December 29, 2003.

a. Given this history, do you agree that as of July 1, 2012 Oklahoma's .037 mg/l phosphorous standard was in effect and was binding on upriver states such as Arkansas?

b. More specifically, do you agree that as of July 1, 2012 compliance with Oklahoma's .037 mg/l phosphorous standard was required for the portion of the Illinois River in Arkansas?

c. If you do not agree that as of July 1, 2012 compliance with Oklahoma's .037 mg/l phosphorous standard was required for the portion of the Illinois River in Arkansas, please explain the legal basis for your disagreement.

Oklahoma water quality standards do not automatically apply to upstream dischargers in other states. In 1992, in *Arkansas v. Oklahoma*, a case that pre-dated Arkansas' authorization to carry out its own Clean Water Act permitting program, the Supreme Court held that it was in EPA's discretion to issue a permit for a publicly owned treatment plant in Fayetteville, Arkansas that required compliance with downstream (Oklahoma) water quality standards. The Court took no position regarding when the Clean Water Act compelled such compliance, only that it was reasonable for EPA to assume that a section 401 water quality certification applied to federally issued NPDES permits. Please note that section 401 applies only to federal permits and as such would not apply to an Arkansas permit now that Arkansas is an authorized state. Under 40 CFR 131.10 state water quality standards are supposed to ensure "attainment and maintenance" of standards applicable to downstream states, but EPA is the arbiter of that when it approves state standards. Under section 402(b) of the Clean Water Act a state that is downstream of an authorized state gets notice of permits and the opportunity to file recommendations, but has no veto authority. Under section 402(d) of the CWA, EPA has the authority to review state issued permits and impose additional conditions. Interpreting this section, in *International Paper Co. v. Ouellette*, 479 U.S. 481, 493, 490-91 (1987), the Supreme Court found that the only law applicable to a point source in an authorized state is the law of the source state. A downstream state is subordinate to a source state and its only recourse is to ask EPA to veto or condition a permit.

31. Please identify any investigations and/or lawsuits the Office of Attorney General initiated after January 17, 2011 to address groundwater contamination associated with swine animal feeding

operations and any publicly available data in your possession regarding levels of groundwater contamination at any swine animal feeding operations, as well as any communications that the Office of Attorney General has had with the owners or operators of swine animal feeding operations after January 17, 2011.

The Oklahoma Department of Agriculture regulates Concentrated Animal Feeding Operations (CAFOs) and swine operations generally under the Oklahoma Agriculture and Environmental codes. The Oklahoma Department of Agriculture and the Oklahoma Office of the Attorney General already had several large swine feeding operations under Consent Decree or Settlement Agreement by the time I took office in 2011. (Hanor Roberts & Seaboard Foods, for example) The terms of those Consent Decrees and Settlement Agreements required the swine operations to make regular reports to the Department of Agriculture and the Office of the Attorney General. These reports included monitoring well data, lagoon data and other terms to be carried out by the operators pursuant to the agreements. My office has continued to monitor these operations to confirm compliance with the Consent Decree and Settlement Agreements.

SENATOR CARDIN

15. In 2005, former Attorney General Drew Edmondson filed a federal lawsuit in 2005 seeking to prohibit the spreading of chicken waste over land in the Illinois River Basin in northeastern Oklahoma. Companies named in *State of Oklahoma v. Tyson Foods Inc.* (No. 4:05-cv-00329) include Tyson Foods Inc., Tyson Poultry Inc., Tyson Chicken Inc., Cobb-Vantress Inc., Cal-Maine Foods Inc., Cargill Inc., Cargill Turkey Production L.L.C., George's Inc., George's Farms Inc., Peterson Farms Inc., Simmons Foods Inc., Cal-Maine Farms Inc. and Willow Brook Foods Inc. On December 9, 2015, the State of Oklahoma filed brief amici curiae along with 21 other states in support of the petitioners in *American Farm Bureau Federation v. EPA* (No. 15-599). The Tyson Foods defendants did not participate in the Bay TMDL lawsuit, and the American Farm Bureau was not a party to the Oklahoma suit. However, Tyson Foods Inc., headquartered in Springdale, Arkansas—the largest poultry producing company in the world—is a member of the Arkansas Farm Bureau. Do you accept that the American Farm Bureau, a national organization, represents the interests of the Arkansas Farm Bureau and its members, including Tyson Foods? Explain why or why not.

It is my understanding that the American Farm Bureau Federation is a distinct corporate entity from the Arkansas Farm Bureau, which is a distinct corporate entity from Tyson Foods. Accordingly, I do not believe one can ignore corporate form and conflate the American Farm Bureau Federation with either the Arkansas Farm Bureau or Tyson Foods. I observe that the Pennsylvania Farm Bureau filed suit against EPA in the challenge to the Chesapeake Bay TMDL on its own behalf, notwithstanding the fact that American Farm Bureau Federation also was a plaintiff.

16. In 2013, despite the lack of a verdict in the Tyson Foods case, you added the State of Oklahoma to the American Farm Bureau/poultry industry backed lawsuit against the EPA's efforts to enforce a TMDL to restore water quality in the Chesapeake Bay. You sided with the American Farm Bureau, the Fertilizer Institute, the National Chicken Council, the National Pork Producers Council and other farming interests. The lawsuit claimed EPA was exceeding its authority in enforcing "total maximum daily load," or TMDL, standards in Chesapeake Bay, limitations on nitrogen, phosphorus and sediments. In what ways did you balance the interests of your client, the State of Oklahoma, as Counsel for Amicus Curiae in *American Farm Bureau* while Tyson Foods, in which you represented the State of Oklahoma as Plaintiff, was ongoing?

These are two different lawsuits regarding different parties and different matters. There also is no issue conflict because the issues raised in the two lawsuits also are distinct.

17. In 2016, more than six years after arguments concluded in Tyson Foods, there has been no final ruling from U.S. District Court Judge Gregory K. Frizzell. Do you find the six-year delay in Tyson Foods to be acceptable or reasonable, and if so, why?

It would not be appropriate for me as an attorney to comment on the acceptableness or reasonableness of the actions of a judge before whom the Office of the Attorney General has a pending case.

18. Please provide a list of all confidential government documents related to the Chesapeake Bay TMDL to which you would not have access but for your status as counsel to the State of Oklahoma as amicus curiae in American Farm Bureau.

I am not aware of any such documents. A request for such documents can be made to the Office of the Attorney General pursuant to the Oklahoma Open Records Act.

19. If the Supreme Court were to grant certiorari in American Farm Bureau, or a case like it challenging the Chesapeake Bay TMDL, how would you direct the EPA as Administrator to rigorously defend its own rule?

Any TMDL should be a cooperative effort. If confirmed as EPA Administrator and if the litigation challenging the Chesapeake Bay TMDL reached the Supreme Court during my time in office, I would expect to consult with the States and other interested stakeholders about the issues raised in such litigation.

20. In what ways did you balance the interests of your client, the State of Oklahoma, as Amicus Curiae in American Farm Bureau and as Plaintiff in Tyson Foods?

These are two different lawsuits regarding different parties and different matters. As Attorney General of Oklahoma, I represent the interests of the State of Oklahoma when I seek to ensure that federal law is followed such that Oklahoma retains its sovereign authority to regulate where federal law allows such state regulation..

21. Do you accept that the Chesapeake Bay TMDL could still fail to significantly reduce pollution flowing to the Chesapeake Bay if the EPA steps back from its role in holding states accountable for their cleanup commitments? Explain why or why not.

It is my understanding that recent quality data shows that the water quality of the Chesapeake Bay is improving. Further, it is my understanding that the United States Geological Survey and other researchers have found that the time lag between measures taken on the ground and water quality response can be years, decades or even longer. Accordingly, today's improvements in water quality are likely the result of measures taken before the effective date of the Bay TMDL. These measures, as well as state plans to require treatment plants upgrades that also pre-date the effective date of the Bay TMDL, will continue to improve water quality. That said, the Bay TMDL represents a cooperative effort of all states in the watershed and EPA has a role in overseeing its implementation.

22. The TMDL approach hinges on numeric water quality standards that set a qualitative number for pollution limits, rather than a qualitative description of how healthy waters should be. As Administrator, how would you promote effective numeric standards?

I agree with the Mach 2011 nutrient framework issued by the Assistant Administrator for the Office of Water entitled "Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions," which prioritizes state action to encourage on the ground activities over establishment of numeric nutrient limits. According to the State of Florida, based on their experience with the imposition of federal numeric nutrient limits, controversy over the validity of a number can actually delay pollutant reduction activities, delaying water quality improvements.

23. In the Mississippi River watershed, the Obama Administration defended a lawsuit against the EPA from environmentalists seeking numeric nutrient criteria. The United States District Court for the Eastern District of Louisiana ruled in favor of the EPA, finding "Presumably, there is a point in time at which the agency will have abused its great discretion by refusing to concede that the current approach [...] is simply not going to work." But for now, "EPA is entitled to judgment as a matter of law in its favor." As Administrator, would you continue to waste resources on a qualitative, voluntary approach?

I was not involved in the litigation your reference, and am not familiar with the details of the case.

24. As Administrator, do you intend to make enforcement of the Chesapeake Bay cleanup plan a priority? How? Do you acknowledge that it will be even more difficult to make progress without EPA?

The Chesapeake Bay TMDL has been upheld by the Third Circuit Court of Appeals. If confirmed, I will continue to enforce the law and will continue EPA's leadership role as a member of the Chesapeake Bay Executive Council. I agree that progress would be difficult without a collaborative process.

25. Would you deny the political will in the states of the Chesapeake Bay watershed to protect the Bay?

I would listen to the views of all interested stakeholders including the States.

26. In a 2013 speech, you said "There are issues with respect to clean water and air that cross state lines. There is a role, and I think it's important for conservatives, for us to recognize, that though I don't like the EPA [...] I think it's not good for us to say that the EPA doesn't have any role." How would you characterize the EPA's role in mediating cross-state air and water pollution disputes?

I certainly agree that EPA plays a leadership role in mediating cross-state air and water pollution disputes.

27. In 1992, the Supreme Court held in *Arkansas v. Oklahoma* (No. 90-1262), a case challenging the EPA's issuance of a National Pollution Discharge Elimination System (NPDES) permit to a publicly owned treatment plant in Fayetteville, Arkansas for a discharge into a river flowing into Oklahoma, that the Clean Water Act authorizes the EPA to require that point sources in upstream states not violate water quality standards in downstream states.²¹ Is the EPA interpreting this Supreme Court precedent correctly? If not, how would you change its interpretation through NPDES?

Arkansas v. Oklahoma involved an EPA-issued permit because at the time of the litigation the Fayetteville wastewater treatment plant began operation Arkansas did not have an approved state permitting program. Oklahoma is authorized to implement its own NPDES permitting program, in lieu of the federal program. As such, I am not familiar with how EPA is applying Arkansas v. Oklahoma when it issues permits in the handful of states without such approved permitting

¹ <https://www.epa.gov/sites/production/files/2015-01/documents/waterpollution-ludwiszewski-memo.pdf>

programs.

28. After the Arkansas decision, you agreed to a three-year delay in 2012 to allow for an independent study of the science behind the standard. What specific factors motivated your decision to delay enforcement of Oklahoma's standard?

The "Second Statement of Joint Principles and Actions" that Oklahoma entered into with Arkansas in 2012 actually required that "[t]he States, through the appropriate Parties, will continue to require existing point source dischargers to the Illinois River Watershed with a design capacity of greater than 1 MGD to operate under existing National Pollutant Discharge Elimination System ("NPDES") permits reflecting an effluent limit for total phosphorus of not more than 1 mg/L based upon a 30 day average, assuming the U.S. Environmental Protection Agency does not object" and likewise required that "Parties for both States will continue cooperative efforts to improve and protect water quality in the Scenic Rivers."

29. Please provide all communications you had had with representatives of agricultural and other companies regarding water quality litigation between Arkansas and Oklahoma.

Such communications can be requested from the Oklahoma Office of the Attorney General through a request made to that office pursuant to the Oklahoma Open Records Act.

31. What is your understanding of the role of climate change in algal blooms?

EPA identifies the following as causes of harmful algal blooms: sunlight, slow-moving water, and excess nutrients. For climate change to have a role, it would first have to have an impact on one of these three causes.

32. Please provide a list of water treatment plants under consent order from the Oklahoma Department of Environmental Quality during your tenure as Attorney General. Please identify funding sources other than federal funding that are available to bring these treatment plants into compliance with the Clean Water Act.

This question should be directed to the Oklahoma Department of Environmental Quality, as I have no personal knowledge of such matters.

33. Of the 1,677 public water supplies under the purview of the Oklahoma Department of Environmental Quality, 19 had recent elevated detections of lead in March, 2016. Please describe any action you took to address lead contamination as Attorney General.

As the question indicates, the Oklahoma Department of Environmental Quality as opposed to the Office of Attorney General has primary responsibility for implementing and enforcing environmental laws in Oklahoma.

34. When more than 10 percent of tap water samples in a local system contain lead levels of at least 15 parts per billion, the state steps in to review the water system's treatment for corrosive properties and update the sampling schedule as necessary. How have budget cuts to the Oklahoma Department of Environmental Quality impacted sampling?

I have no personal knowledge of the Oklahoma Department of Environmental Quality's budget, or how any budget cuts may have impacted that office.

35.EPA and the Centers for Disease Control and Prevention (CDC) agree that there is no known safe level of lead in a child's blood. Lead is harmful to health, especially for children. Do you accept that there is no safe level of lead in a child's blood?

I am concerned about the health of children. I have not myself reviewed the scientific studies correlating blood lead levels to impacts in children. However, it is my understanding that neither EPA nor CDC have identified a "safe" level of exposure, but instead have adopted levels appropriate for action under their specific statutory authorities.

36.Please provide any information relating to enforcement actions for Lead and Copper Rule violations undertaken during your tenure as Attorney General for Oklahoma.

Such enforcement actions would have been undertaken by Oklahoma's environmental and water regulators, at agencies like the Oklahoma Department of Environmental Quality or the Oklahoma Water Resources Board. This question should be directed to those agencies so that can describe to you the relevant actions taken by the State of Oklahoma.

37.The Safe Drinking Water Act (SDWA) requires EPA to establish and enforce standards that public drinking water systems must follow. EPA delegates primary enforcement responsibility (also called primacy) for public water systems to states and tribes if they meet certain requirements. In a letter to Oklahoma Secretary of the Environment Gary Sherrer, EPA Regional Administer Ron Curry said the State had until June 1, 2013 to fully implement the Stage 1 and Stage 2 Disinfectants and Disinfection Byproducts Rules. Please provide all information related to Oklahoma's primacy under the Public Water System Supervision Program during your tenure as Attorney General.

As your question indicates, such matters would be within the purview of Oklahoma's environmental regulators, not the Office of Attorney of General.

38.Do you concur that persistent drinking water safety problems indicate the need to strengthen, not weaken, the federal law designed to ensure the safety of Americans' drinking water? Explain why or why not.

I believe that persistent drinking water problems largely stem from a failure to comply with current laws and regulations. If confirmed, I will work to increase compliance with the law, which will require effective enforcement and oversight, technical assistance, and infrastructure improvements. It also may require changes to existing regulations to improve oversight tools and eliminate ambiguities that lead to compliance issues.

42.The CWA prohibits anyone from discharging pollutants, including lead, through a point source into a water of the United States unless they have a National Pollutant Discharge Elimination System (NPDES) permit. As part of their water quality standards regulations, states and authorized tribes adopt ambient water quality criteria with sufficient coverage of parameters, such as lead, and of adequate stringency to protect the designated uses of their surface waters. What changes, if any, would you make to the NPDES permit?

I have not contemplated any changes to the NPDES permit program, if confirmed.

47.What is the goal of your lawsuit asking to strike down EPA's "Waters of the United States" rule under the CWA? What will the states be empowered to do that they can't do with the rule in place? (be specific)

The goal of the lawsuit I brought to advance the State of Oklahoma's interest in protecting its regulatory authority is to have the courts vacate the WOTUS rule. If the WOTUS rule is vacated, we will return the status quo, and the State of Oklahoma's sovereign authority to regulate waters within its border will not be diminished.

48. The brief filed on behalf of states argues that states need to "protect" waters. Are you aware of the legal concept under the Clean Water Act that provides for states to be more protective than the Clean Water Act, not less—that the Act sets a minimum standard of protection and cleanliness?

The state brief filed in the WOTUS case argues that the WOTUS rule fails to recognize the limits on federal authority that Congress adopted when it enacted the CWA over forty years ago. Under the Act, Congress "chose to 'recognize, preserve, and protect the primary responsibilities and rights of States . . . to plan the development and use . . . of land and water resources.'" Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs, 531 U.S. 159, 174 (2001) ("SWANCC") (quoting 33 U.S.C. § 1251(b)). As noted in the state brief: "The Rule likewise reaches and even exceeds the outer bounds of Congress's constitutional authority. The Rule's expansion of federal authority over intrastate waters will "impinge[] o[n] the States' traditional and primary power over land and water use," and "readjust the federal-state balance." SWANCC, 531 U.S. at 174. The Rule's coverage of intermittent waters, ephemeral waters, and isolated sometimes-wet lands "presses the envelope of constitutional validity," Rapanos, 547 U.S. at 738 (Scalia, J., plurality) (citation omitted), far more than the challenged agency actions in Rapanos and SWANCC. That is, states have exclusive, not additional, authority over all land and non-navigable, wholly intrastate waters.

49. Do you believe that states should be free to allow more pollution or fewer waters to be protected from pollution and development than described in the Waters of the United States Rule?

The litigation brought by the states was premised on a concern that EPA had exceeded its statutory authority as established by Congress. Additionally, the WOTUS rule is a jurisdictional rule, not a substantive rule as your question suggests.

50. Are there waters that you believe should not be protected under the Clean Water Act? What specifically are they? Why do you think that the rule covers those waters now? Why do you think they should not be protected?

As I stated in my testimony before the Committee, I believe that the Clean Water Act regulates more than navigable waters. But, it does not regulate all waters. How much more would best be answered by Congress. Absent Congressional action, it is the role of EPA to seek to provide clarity on the scope of federal jurisdiction. What that is has to be determined and assessed through notice and comment rulemaking. The WOTUS rule exceeded the authority granted by Congress by allowing federal regulation of land if rainwater collects on the surface and seeps into the ground or if rainwater runs over the land as ephemeral flows. It also exceeded CWA authority by regulating isolated ponds and wetlands. Such non-navigable, wholly intrastate water should be protected, as appropriate, under state, not federal, law. For example, isolated bodies of water have not been subject to federal regulation since the 2001 Supreme Court decision in SWANCC struck down earlier agency attempts to expand federal jurisdiction beyond the limits of the Act. The WOTUS rule would reverse that decision and regulate the same waters that the Supreme Court has already said are subject to exclusive state regulation.

51. In your lawsuit against the Clean Water Rule you argue against what you perceive as an undue

federal intrusion on local control of decisions about water quality. You have also argued that cities in towns in Oklahoma should not be able to control their water quality by issuing local regulations for the activities of oil and gas companies. How is your stance in favor of local control under the Clean Water Act consistent with your position against local control when it comes to the water polluting activities of oil and gas companies? What legal underpinning is there for that difference?

State concerns regarding the WOTUS rule are based on the limitations on federal authority under the Clean Water Act. Oklahoma concerns over the regulation of commercial activities including oil and gas company operations by local governments are based on the limitations of local authority under state law and federal law. Respect for the rule of law underpins both concerns, and both seek to ensure that laws enacted by the relevant legislatures—Congress on one hand, the Oklahoma Legislature on the other—are followed.

52. Wetland ecosystems provide significant environmental and economic benefits to American citizens including water purification, flood and erosion control, and habitat for wildlife and commercial fish species. In fact, over fifty percent of commercial fish and shellfish stocks in the Southeastern United States rely on coastal wetlands. Section 404 of the Clean Water Act protects wetland ecosystems by regulating the discharge of dredging and fill material. If confirmed, what is your plan to improve the biological condition of wetlands?

If confirmed, I will take care to faithfully execute all environmental laws enacted by Congress, including Section 404 of the Clean Water Act.

53. As of 2014 Oklahoma had nearly 14,000 miles of rivers and nearly 1,000 square miles of lakes that are so polluted they don't meet the state's water quality standards. That's approximately 42% of all the delineated stream miles in Oklahoma, and almost 1,600 of those were added during your time as Attorney General. Only 107 miles of rivers in Oklahoma – about a third of one percent – were classified as meeting Oklahoma's water quality standards. The other 58% are classified as having insufficient data to enable the state to say they're meeting state standards. As Oklahoma's Attorney General, what did your office do to ensure that the companies were complying with the state's clean water laws?

The Oklahoma Department of Environmental Quality and the Oklahoma Water Resources Board have primary responsibility for implementing and enforcing environmental laws in Oklahoma. Such questions should be directed to those environmental regulators.

54. How many water pollution enforcement actions did your office file, and how many of those resulted in orders to halt or reduce pollution discharges? Please provide a comprehensive list.

The Oklahoma Department of Environmental Quality and the Oklahoma Water Resources Board have primary responsibility for implementing and enforcing environmental laws in Oklahoma. Those agencies are thus best situated to provide a comprehensive list of enforcement actions take by the State of Oklahoma. The Office of Attorney General has on occasion assisted those environmental regulators by providing legal representation in cases under the CWA for pollution to groundwater, streams and other waterways. Other cases included pollution that caused fish kills and CERCLA Superfund sites that damaged Oklahoma groundwater and or streams. Those cases are EPA, States of Oklahoma & Texas v Mahard Egg Farm; EPA, State of Oklahoma v. Doe Run Mining et al.; ODWC v. Kent Feeds; ODWC v. Southern Towing; State Of Oklahoma, ODWC v Kelco Manufacturing; and State of Oklahoma & Cherokee Nation v. Sequoyah Fuels Corp.